

Terms & Conditions

1. Definitions and Interpretation

1.1 Definitions

Agreement

The Order Schedule in conjunction with these Terms and Conditions, as we may amend from time to time. This Agreement comes into effect on the Agreement Date. In the event of a conflict between the Order Schedule and these Terms and Conditions, the Order Schedule shall prevail.

Agreement Date

The date set out in the Order Schedule; or the date of acceptance of an order if the order is placed using the FLO Fixed Price Service or the FLO Bidding System.

Business Day

Any day that is not a Saturday, Sunday or public holiday in England.

Bid

An offer to purchase the next available Lead in a particular Lead category in return for a specified sum.

Bid Form

The electronic form used for placing a Bid.

Client

The individual, partnership or organization that is purchasing Leads from FLO and is identified in the Order Schedule.

Commencement Date

Is the date of commencement of delivery of the Leads by FLO to the Client.

Confidential Information

Any information that is received from a disclosing party that, if disclosed in tangible form, is marked confidential, or if disclosed otherwise is confirmed in writing as being confidential or, whether disclosed in tangible form or otherwise, is manifestly confidential. Confidential Information includes the Order Schedule, the Leads and the relationship between the parties.

End User

The individual, partnership or organisation that is identified in the Order Schedule as an end user and is the party that will ultimately make use of the Leads.

Enquirer

The person identified by FLO in a Lead.

FLO

FLO means FinanceLeadsOnline.co.uk. FinanceLeadsOnline.co.uk is a trading name of BeatThatQuote.com Limited, a company incorporated and registered in England and Wales with company number 05346120 whose registered office is at 5 New Street Square, London, EC4A 3TW.

FLO Bidding System

A platform available on the FinanceLeadsOnline.co.uk Website that allows a Client to purchase Leads on a bidding basis.

FLO Fixed Price Service

A platform available on the FinanceLeadsOnline.co.uk Website that allows a Client to purchase Leads at a predetermined fixed price.

FLO Managed Service

A service where the Client purchases Leads via a FLO sales representative.

FinanceLeadsOnline.co.uk Website

FLO's business to business interface that provides information, functionality and log in access to the FLO Bidding System, the FLO Fixed Price Service and FLO Managed Service and is located at www.FinanceLeadsOnline.co.uk.

Lead

An enquiry about a specific product or a category of products made by an Enquirer at a certain point in time.

Non-qualified Lead

A Lead that:

- (a) is an application from a minor;
- (b) is an application from a non-UK tax payer;
- (c) is an unauthorised application - where the Enquirer's details are correct but was not authorised by the Enquirer;
- (d) is a hoax application;
- (e) does not have at least one valid telephone number - this does not include the Client not being able to contact the Enquirer on a telephone number that is otherwise valid;
- (f) the Lead details stated in the Order Schedule do not match the Lead provided by FLO; or
- (g) has been previously supplied by FLO within 30 days of the Lead generation date.

Order Schedule

Any hard copy, electronic order form, registrations and/or Bid Form completed for the purposes of purchasing a Lead.

Personal Data

Shall have the meaning given to it in the Data Protection Act 1998.

Price

The charges payable to FLO by the Client as set out in the Order Schedule and in these Terms and Conditions.

Qualified Leads

Leads supplied that are not Non-qualified Leads.

Seed Enquirer

A fake Lead set up by FLO and forwarded to the Client as a regular Lead for the purposes of monitoring the Client's compliance with this Agreement.

Working Hours

Between hours of 9.00 a.m. to 5.30 p.m. local time on a Business Day.

1.2 Interpretation. In this Agreement:

- (a) Any reference to a statute, statutory provision or subordinate legislation shall be construed as referring to such legislation as amended and in force from time to time and to any legislation which (either with or without modification) re-enacts, consolidates or enacts in rewritten form any such legislation.
- (b) Reference to a date that is not a Business Day shall be treated as a reference to the next Business Day.
- (c) References to "include" and "including" and "in particular" are to be construed without limitation.
- (d) Words indicating the singular shall include the plural and vice versa.
- (e) The headings contained in this Agreement are for convenience of reference only and shall not effect its interpretation.

2. Commencement

This Agreement shall commence on the Agreement Date and shall continue until terminated in accordance with clause 10 below.

3. FLO Service

- 3.1** The terms in this clause 3 apply to FLO Bidding System, FLO Fixed Price Service and FLO Managed Service.
- 3.2** During the term of this Agreement, FLO shall refer Leads to the Client in accordance with the terms of this Agreement.

- 3.3 FLO will source Leads through numerous media channels using its Lead distribution engine and such other means as it deems appropriate and will use reasonable endeavours to qualify Leads by product type, eligibility for a product and timing.
- 3.4 FLO Lead collection process will comply with the Data Protection Act 1998.
- 3.5 FLO will use reasonable endeavours to deliver Leads to the Client without delay.
- 3.6 FLO cannot guarantee that a Lead will produce business for the Client. FLO will not replace or refund any Lead that falls outside of FLO's Lead replacement policy as stated below.
- 3.7 In the event of a Lead being a Non-Qualified Lead, the Client shall notify FLO via FLO's online returns system within 7 days of delivery of the Lead by FLO. FLO may conduct its own analysis of Non-Qualified Leads and shall notify the Client of the results of such analysis within 7 Business Days. If FLO agrees that such Lead is a Non-Qualified Lead then FLO shall replace the Lead.
- 3.8 FLO shall have no further liability for Non-Qualified Leads and any replacement made by FLO to the Client in accordance with the provisions of this Clause 3 shall be the Client's sole remedy.
- 3.9 In the event that the Client has not notified FLO using the agreed returns method in accordance with Clause 3.7 the Client will be deemed to have accepted the Lead.
- 3.10 FLO will use its reasonable endeavours to meet the Lead quantity stated on the Order Schedule.
- 3.11 If FLO does not supply the monthly Lead volume set out in the Order Schedule, then where the Client has made advance payments for those Leads, unless agreed otherwise with the Client, FLO will carry forward any over payment as payment on account which can be utilised against the delivery of Leads in the following months.
- 3.12 Unless otherwise stated in the Order Schedule, each Lead for products of a certain category supplied to the Client will not be resold to another Client for products of the same category for a period of 30 days from the date of generation.
- 3.13 FLO may include a number of Seed Enquirers per order per month for the purposes of monitoring the Client's compliance with this Agreement.

4. FLO Bidding Platform Service

- 4.1 In addition to the paragraph 3 above, the following shall apply to the FLO Bidding System.
- 4.2 FLO shall at its sole discretion make Leads available on the FLO Biding Platform Service.

4.3 Where a Bid placed by a Client is:

- (a) above the specified minimum Bid price; and
- (b) is the highest Bid at the time when the next Lead becomes available,

FLO shall accept such Bid and will deliver the relevant Lead to the Client without delay.

4.4 FLO is not acting as an auctioneer in selling the Leads via the FLO Bidding System. The FLO Bidding System is a mechanism to offer Leads to various Clients simultaneously.

5. FLO's Warranties

5.1 FLO warrants that:

- (a) It will perform its obligations under this Agreement with reasonable skill, care and diligence and in accordance with good industry practice.
- (b) It will maintain a consumer credit license as required by the Consumer Credit Act 1974.
- (c) In respect of each referral it shall have obtained the consent of the relevant Enquirer to disclose the Personal Data of such Enquirer to the Client for the Client to use such Personal Data only in the manner and for the purpose envisaged by this Agreement.
- (d) All sums payable under this Agreement are exclusive of VAT (if applicable) or any other applicable taxes payable on such sums, which shall be added if appropriate at the rate prevailing at the relevant point.
- (e) FLO gives no other warranties or representations (whether express or implied) and cannot guarantee that any Lead will be converted into business and the Client acknowledges that it should check all the information provided in a Lead when giving advice to the Enquirer.

6. FinanceLeadsOnline.co.uk Website

6.1 While FLO uses reasonable endeavours to ensure the FinanceLeadsOnline.co.uk Website is normally available 24 hours a day, FLO does not guarantee its availability and shall not be liable if for any reason the FinanceLeadsOnline.co.uk Website is unavailable at any time or for any period.

6.2 FLO may suspend access to the FinanceLeadsOnline.co.uk Website temporarily and without notice in the case of system failure, maintenance or repair or for any reason beyond FLO's control.

7. Client's Obligations

- 7.1 If the Client completes a Bid Form, it confirms that it wishes to purchase the Lead for the amount stated in the Bid Form. If the Lead associated with this Bid is delivered by FLO the Client agrees that it will pay the Price in accordance with the payment terms set out in this Agreement.
- 7.2 The Client may amend or withdraw a Bid on the FinanceLeadsOnline.co.uk Website. The Client acknowledges that in the event that FLO has not received notification of any amendment or withdrawal of a Bid prior to the processing of the Bid, then such Bid shall be deemed to be binding on the Client and the Client must pay its Price for it.
- 7.3 If the Client chooses to use the FinanceLeadsOnline.co.uk Website, it must select a unique password and user identification. The Client confirms that it is responsible for the security of the password and user identification and FLO is not responsible for any misuse of the password or the user identification including but not limited to any financial loss the Client may incur. If the Client has cause to believe that passwords or user identifications may have been used by an unauthorised person the Client must notify FLO immediately.
- 7.4 Where an End User is specified, the Client undertakes to take all necessary steps to ensure that the End User complies with all the relevant obligations under this Agreement and the Client will indemnify FLO for any loss and/or damage caused to FLO by any acts or omissions by the End User as if the Client had itself committed such act or omission.
- 7.5 Where the relationship of the End User and the Client is one whereby one party controls (or effectively controls) the other then the obligations of each party are deemed to have been accepted by the other. Where such obligations cannot be enforced by English Law then such obligations shall be accepted jointly and severally by the directors of the Client.
- 7.6 Leads will be delivered to the Client 24 hours a day. The Client must ensure that the Leads are collected either using the agreed method or from the FinanceLeadsOnline.co.uk Website. The Client will endeavour to contact the Enquirer during the Client's opening times within 1 hour of receipt of the Lead to acknowledge the application and discuss and seek to fulfil the Enquirer's requirements. The Client will make at least three attempts a day to contact the Enquirer by telephone at different times during the day, e.g. morning, afternoon and evening, over a three day period.
- 7.7 In the event of a Lead being a Non-Qualified Lead the Client shall notify FLO via FLO's online returns system within 7 days of delivery of the Lead.
- 7.8 Where FLO and the Client agree any payment scheme that includes any commission based payment element the Client must ensure:
- (a) That there are systems in place to completely and accurately record the communication and progress of every Lead sent by FLO to the Client.

- (b) That it provides to FLO management information regarding the progress of every Lead, the detail and frequency of which will be defined in the Order Schedule.
- (c) That it produces a weekly commission report detailing each Lead, where commission is due; the amount of commission payable to FLO; the Lead generation date; the Enquirer's surname, telephone number, post code, requested value, and the date of payment to FLO of such commission. The Client shall provide this report in a format reasonably satisfactory to FLO from the first week where a commissionable event occurs.
- (d) That the commission report described above includes all commissions earned by the Client including but not limited to bonuses and overrides.
- (e) That it allows FLO upon reasonable notice, to audit the records of the Client to confirm the accuracy of any commission information provided and sums paid to FLO under this Agreement. Further to this, the Client undertakes that it has and will maintain on a continuing basis the authority to allow FLO to audit the relevant records of the End User (if applicable) for this purpose. FLO shall have the right to take copies of any relevant documents. The costs of the audit shall be borne by FLO unless the audit resulted in the finding that Commission owed to FLO is more than that paid to FLO for the relevant period in which case the cost of the audit will be borne by the Client.
- (f) That it collects commissions from their business partners at the earliest opportunity.

Where the Client fails to comply with the Client obligation described in this clause 7.8, the Client will immediately pay compensation in the form of liquidated damages to FLO in the amount equivalent to the ordinary purchase price for that relevant Lead, had it have been purchased by the Client though the FLO Fixed Price Service. The parties agree that this sum constitutes a reasonable estimate of the losses to FLO attributable to such default of the Client. This clause is without prejudice to any other remedy which FLO may have for breach of this Agreement.

- 7.9 The Client will be responsible for all dealings with the Enquirer with respect to the Lead once FLO has referred the Lead to the Client. The Client should make it clear to the Enquirer that they are acting as a separate advisor and shall at no time present themselves as an agent of FLO or the website that sourced the Lead.
- 7.10 The Client shall pay the Price for each Lead on the terms stated in the Order Schedule and these Terms and Conditions whether or not the Lead is converted to actual business for or by the Client.
- 7.11 Each Lead, sent to the Client by FLO, must only be serviced by the Client or End User. The Client must not sub-contract, transfer, sell on or rent or provide any Lead to any third party without the prior knowledge and written consent of FLO.
- 7.12 The Client must obtain the express permission of an Enquirer prior to providing any personal information belonging to that Enquirer to any third party for any reason (for example for the purposes of conducting a credit check or referring the Enquirer to a lender).
- 7.13 In the event that any Personal Data in a Lead is utilised by the Client in a way which is outside the scope of the Agreement the Client agrees to immediately pay

compensation to FLO in the amount of £100 (one-hundred pounds) per Lead for all Leads delivered to the Client under this Agreement. The parties agree that this sum constitutes a reasonable estimate of the losses to FLO attributable to the Client's misuse of the Lead. This clause is without prejudice to any other remedy which FLO may have for breach of this Agreement.

7.14 The Client must co-operate with FLO with regard to any feedback requests and must complete and return any reasonable questionnaires sent out by FLO within 14 days of receipt.

7.15 In performing the Client's obligations under this Agreement the Client shall act in good faith, exercise all the due skill, care and diligence that would be expected of a professional advisor. The Client shall ensure that their conduct of business shall comply with all applicable laws and regulations. The Client will deal with the Leads as swiftly as they would deal with a Lead that they generated themselves. The Client shall not act in a way that could have an adverse effect on the reputation of FLO, or the website from where the Lead was sourced.

7.16 The Client warrants to FLO on a continuing basis that:

- (a) it has full capacity and authority to enter into this Agreement;
- (b) it will comply with all applicable laws relating to this Agreement;
- (c) it has all consents, licenses and regulatory authority to conduct its business and to provide the advice and or products and services related to the Lead for which it offers to purchase or makes a Bid;
- (d) the data or other information that it provides to FLO is not false, misleading, inaccurate, offensive, threatening, abusive, defamatory, in breach of any third party intellectual property rights, fraudulent, in breach of any applicable laws or regulation, containing any computer viruses or anything designed to interrupt or damage software of the FinanceLeadsOnline.co.uk Website;
- (e) it has and will maintain on a continuing basis the authority to bind the End User to the terms of this Agreement;
- (f) where it purchases a personal injury Lead, that it will do so on the basis that it operates a no-win, no-fee contingency fee service for that particular Enquirer;
- (g) where applicable, that it is regulated by the Ministry of Justice and Solicitors Regulatory Authority in respect of regulated claims management activities or legal matters;
- (h) with respect to any mortgage Lead purchased by it pursuant to this Agreement, it provides a whole of market service;
- (i) with respect to any insurance Lead purchased by it pursuant to this Agreement, it operates a range of insurers for insurance; and

- (j) with respect to any loan, pension, pension release, annuity, investment or banking (including saving and ISA) Lead purchased by it pursuant to this Agreement, it provides a wide range of product types for that Lead type from a variety of providers.
- 7.17 The Client must immediately notify FLO of any revocation or alteration to any licenses, memberships and/or authorisations which may affect its ability to perform any of its obligations under this Agreement including its ability to utilise the Leads.
- 7.18 The Client agrees to indemnify FLO against all losses, damages, claims, expenses and other costs (including legal expenses) incurred or as a result of any claims by Enquirers against FLO as a result of or in connection with its or the End User's breach of this Agreement or negligence.
- 7.19 The Client shall promptly comply with any reasonable request by FLO for information related to this Agreement in order for FLO to comply with any laws, regulations or guidelines and shall use best endeavours to supply such information requested forthwith or to allow FLO to inspect the Client's relevant records.
- 7.20 The Client acknowledges and consents to FLO recording any telephone call made by or to the Client for training and monitoring purposes and to record the details of any transaction conducted or information supplied by the Client during that call.
- 7.21 FLO may offer discounts or other special offers to certain Clients from time to time (each offer a "**Promotional Offer**") which will be subject to certain conditions such as a validity period and the eligibility criteria. Unless otherwise stated in the Promotional Offer, each eligible Client may take advantage of each Promotional Offer only once by (i) quoting the code of the Promotional Offer at the start of the purchase of Leads, and (ii) if the Promotional Offer applies to a network, providing proof of membership in that network on FLO's request. Any Promotional Offer cannot be exchanged for any other item, offer, or cash alternative, nor can it or any part of it be transferred to any third party. FLO reserves the right to withdraw any Promotional Offer at any time but this shall not affect the Price of Leads already purchased under a Promotional Offer.

8. Personal Data

- 8.1 Each party shall comply with its respective obligations under the Data Protection Act 1998 (including any modification or re-enactment of it) (the "Act") and any other relevant legislation. For the purposes of this clause, the terms "personal data", "data controller", "data processor" and "data subject" shall have the same definitions as given to them in the Act.
- 8.2 FLO owns all Personal Data in a Lead.
- 8.3 FLO provides the Client with a license to use the Personal Data in the Lead for the purpose of this Agreement only. This license excludes any right to resell, rent,

sub-contract the use of or transfer of the Personal Data (or any part of it) to any third parties or use of the Personal Data outside the scope of this Agreement.

- 8.4 With respect to the Personal Data in a Lead, the Client undertakes that it:
- (a) will not use the Personal Data for any purpose which may be inconsistent with the sole purpose for which it was provided;
 - (b) shall operate appropriate operational and technological processes and procedures to safeguard against the unauthorized access, loss, destruction, theft, use or disclosure of the Personal Data;
 - (c) will comply with any reasonable request from FLO to assist FLO to comply with any responsibilities it may have under UK law; and
 - (d) will promptly provide full details to FLO of any complaints it receives from an Enquirer with respect to this Agreement and will provide FLO with such reasonable assistance with respect to resolving any such complaint.
- 8.5 FLO is and will remain at all times the data controller and the Client shall be the data processor in respect of any Personal Data in a Lead.
- 8.6 The Client shall indemnify FLO and keep FLO indemnified in respect of all costs, losses, damages, claims and expenses arising as a result of a breach of its obligations under this clause 8.

9. Methods of Payment

- 9.1 Payment of the Price together with VAT (if appropriate) at the applicable rate may be made by approved debit, credit or charge card (a "Payment Card"), cheque, bank transfer or other mutually agreed payment method.
- 9.2 Time is of the essence for the payment of any monies to FLO pursuant to this Agreement.
- 9.3 For the FLO Bidding System and FLO Fixed Price Service:
- (a) FLO requires the Client to register a Payment Card with FLO and make full payment for all Leads delivered to the Client by FLO on each Friday following the delivery of those Leads. Additionally when the Price for Leads delivered to the Client reaches the sum of £100 (or a higher sum where agreed by FLO in writing) FLO will immediately take full payment for the Leads delivered.
 - (b) FLO will not deliver any Leads to the Client until a Payment Card has been registered. When the Payment Card has been registered, FLO will conduct and the Client agrees to allow FLO to conduct an electronic pre-authorisation to ensure that funds are available.
 - (c) If at any time subsequent to registration of the Payment Card authority for payment to FLO is refused or withdrawn for any reason, without prejudice to

any other rights that FLO may have, FLO may terminate the Agreement forthwith and/or cease to deliver any further Leads to the Client until another valid Payment Card is registered on the FinanceLeadsOnline.co.uk Website. If such an event shall occur then FLO, at its sole discretion, shall be entitled to charge and the Client agrees to pay, a 50% surcharge on any outstanding balance to cover its administrative costs in dealing with such an event. The Client further agrees that where payment to FLO is declined for any reason, FLO may attempt to obtain payment from the Payment Card for all Leads delivered at any time thereafter.

- (d) If a Payment Card that has been registered is about to expire, FLO is entitled to debit the card for any amounts outstanding to it under the Agreement the day before the expiry of that card regardless of the agreed payment scheme.

9.4 Where the Client uses the FLO Managed Service the following payment schemes can be agreed in the Order Schedule:

- (a) **“100% In Advance Of Commencement Date”** requires the Client to make an advance payment to FLO of the total Price of all ordered Leads prior to the Commencement Date.
- (b) **“50% In Advance Of Commencement Date, Settlement At Month-end”** requires the Client to make an immediate payment to FLO of 50% of the total Price of all ordered Leads prior to the Commencement Date. FLO will endeavour to invoice the Client for the balance of the Qualified Leads supplied, within 8 days of the month end, such invoice to be payable to FLO by the Client immediately and no later 7 days from the invoice date.
- (c) **“100% Settlement At Month-end”** FLO will endeavour to invoice the Client for all Qualified Leads within 8 days of the month end, such invoice to be payable to FLO by the Client immediately and no later than 7 days from the invoice date.
- (d) **“Back End Commission”** requires the Client to pay FLO every Friday (or at such other frequency that may be agreed in writing with FLO and stated in the Order Schedule) for all Leads that have converted to commissionable sales for the Client prior to that Friday. The agreed method of determining the amount of commission due to FLO shall be stated on the Order Schedule. Where commissions due to FLO are based on a percentage of the commissions earned by the Client, then the commissions earned by the Client shall include all commissions earned including but not limited to bonus payments or override payments whether or not such payments are made subsequent to the initial commission amount received by the Client.
- (e) **“Back End Commission, Minimum Price Guarantee. Settlement At Month End”** requires the Client to pay FLO as follows:
 - (i) Within 8 days of month end, FLO will endeavour to invoice the Client the total minimum price as stated in the Order Schedule which the Client has agreed to pay FLO per Lead, for the number of Qualified

Leads supplied, such invoice to be payable to FLO by the Client immediately and no later than 7 days from the invoice date.

- (ii) When the total value of commission due to FLO exceeds the total minimum price as stated in the Order Schedule then the Client shall pay FLO every Friday (or at such other frequency that may be agreed in writing with FLO and stated in the Order Schedule) for all Leads that have converted to commissionable sales for the Client prior to that Friday. The agreed method of determining the amount of commission due to FLO shall be stated on the Order Schedule. Where commissions due to FLO are based on a percentage of the commissions earned by the Client then the commissions earned by the Client shall include all commissions earned including but not limited to bonus payments or override payments whether or not such payments are made subsequent to the initial commission amount received by the Client.

Any variations to the above payment schemes must be agreed in the Order Schedule.

9.5 Without prejudice to any other rights it may have, where payment is not made by the Client in accordance with the terms of this Agreement, FLO may do one or more of the following:

- (a) terminate the Agreement forthwith;
- (b) suspend the Agreement pending the receipt of full payment;
- (c) charge interest at 4% above the base rate of HSBC Bank Plc on any amount outstanding; or
- (d) charge the interest on such outstanding amount (at the prescribed statutory rate of interest for the relevant period as set in The Late Payment of Commercial Debts (Interest) Act 1998).

9.6 FLO may at any time and without notice to the Client set off any liability it has to the Client against any liability the Client has to FLO.

9.7 Further to this, the Client agrees to indemnify FLO in full against all reasonable (internal and external) costs, expenses (including legal fees) and outgoings incurred by FLO in recovering any debt owed to it by the Client under this Agreement.

10. Termination

10.1 Unless stated otherwise in the Order Schedule or in this Agreement, either party may terminate this Agreement by giving the other at least 1 month's notice.

10.2 Upon expiry of the fixed term as agreed in the Order Schedule, the Agreement shall automatically renew for the greater of (a) monthly periods, or (b) periods corresponding with the termination for convenience period set out in the Order Schedule; unless one party provides the other with a notice of at least 21 days before the end of the relevant term of its intention to terminate the Agreement at the end of the relevant term.

- 10.3 Either party may terminate this Agreement immediately on giving the other written notice:
- (a) if the other party commits any material breach of its obligations under this Agreement and which (in the case of a breach capable of being remedied) is not remedied within 20 days of a written request to remedy the same; or
 - (b) if the other party becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if it convenes any meeting of its creditors or makes an arrangement or compromise with its creditors or otherwise becomes insolvent or suffers any similar process or event, whether in the UK or otherwise; or
 - (c) if there is a change in the treatment or interpretation of Value Added Tax regulations that materially affects this Agreement.
- 10.4 The obligations in the following clauses shall survive any termination of the Agreement for 6 years from the date of termination:
- clauses 7.8, 7.13, 7.18, 7.19 8, 9.4(d), 9.4(e) 11, 12, and 15

11. Confidential Information

- 11.1 Neither party will disclose Confidential Information of the other (the “providing party”) obtained under or in connection with this Agreement to any third party without the prior written consent of the providing party, and shall treat it as confidential and use such information only for the purposes contemplated in this Agreement and shall use all reasonable endeavours to effect and maintain adequate security measures to safeguard such Confidential Information from unauthorised access, use, accidental loss, destruction, damage and misappropriation (and in any event shall not use any lesser standard of care than it would apply to its own Confidential Information).
- 11.2 The restrictions contained in clause 11.1 shall not apply to Confidential Information that:
- (a) is in or enters the public domain other than as a result of a breach of an obligation under this clause;
 - (b) is acquired from a third party who owes no obligation of confidentiality in respect of the information;
 - (c) is or has been developed independently by the recipient or was known to it prior to receipt. is in or enters the public domain other than as a result of a breach of an obligation under this clause; or
 - (d) is acquired from a third party who owes no obligation of confidentiality in respect of the Confidential Information.

11.3 It shall not be a breach of this Agreement to disclose Confidential Information to comply with a legal obligation (other than one imposed by contract), but the disclosing party must promptly inform the other of the disclosure as soon as it is able to do so.

12. Liability

12.1 Nothing in this Agreement shall limit or exclude either party's liability for death or personal injury resulting from negligence, for fraud or fraudulent misrepresentation or for any other liability the exclusion or limitation of which is not permitted by English law.

12.2 FLO shall not be liable to the Client for any consequential, special or indirect losses or loss of profits or business, goodwill, anticipated savings, business opportunity, data or use of data, injury to reputation, or regardless of the form of action, whether in contract, strict liability or tort (including without limitation negligence) and regardless of whether FLO knew or had reason to know of the possibility of the loss, injury or damage in question.

12.3 Subject to clause 12.1 and 12.2, the aggregate liability of FLO for all claims arising under or in connection with this Agreement (whether arising under contract, statute, tort shall be the lesser of £1,000 or the total value of monies received by FLO from the Client in respect of the relevant Lead.

13. Force Majeure

FLO shall not be liable to the Client for failure to perform its obligations under this Agreement if that failure is caused by events beyond its reasonable control. These events include fire, flood, earthquake, windstorm or other natural disaster; war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; terrorist attack, civil war, civil commotion or riots; nuclear, chemical or biological contamination; mandatory compliance with any law; explosion or accidental damage; collapse of building structures, failure of computers and non-performance by FLO's suppliers or subcontractors and interruption or failure of utility service, including but not limited to electric power, gas or water, industrial action and failure of third party communications systems.

14. Relationship of the Parties

The relationship of the parties shall be that of independent contractors. Nothing contained in this Agreement shall constitute or be deemed to constitute a relationship of employer and employee, principal and agent or partnership between the parties. Neither of the parties shall be entitled to bind or pledge the credit of the other party, incur any liability on behalf of the other party, sign any document, enter into any agreement or make any promise on behalf of the other party or in any way indicate that it is entitled to do so without the prior written consent of the other party.

15. Governing Law

This Agreement is governed by and interpreted in accordance with English Law and the English courts shall have non-exclusive jurisdiction to resolve any dispute between us.

16. General

- 16.1 The Order Schedule and these Terms and Conditions contain the only terms and conditions upon which FLO is prepared to agree to provide Leads to you.
- 16.2 For the avoidance of doubt, no terms or conditions endorsed upon, delivered with or contained in any Client's request for order, acknowledgement, specification or any similar document shall form part of the Contract and the Client waives any right which it might otherwise have to rely on such terms and conditions.
- 16.3 This Agreement may only be varied if agreed in writing by both parties.
- 16.4 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be void or unenforceable for any reason such provision shall be deemed to be deleted from this Agreement and the parties agree to substitute that provision with a new provision which will as far as possible give effect to the original intention of the parties.
- 16.5 The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any later breach of the same or other provisions, nor shall any delay or omission on the part of either party to exercise or enforce any right, power or privilege that it has or may have under this Agreement operate as a waiver of such right, power or privilege.
- 16.6 Any notice served under this Agreement must be in writing and signed by or on behalf of the party. Notices may be delivered to the recipient by hand, by first class post, by fax or by email to the receiving party at its address or fax number set out in this Agreement or as the receiving party notifies to the sending party from time to time. Any such notice so served shall be deemed to have been served: (i) if sent by hand, at the time of delivery; (ii) if sent by first class post, upon the expiry of 48 hours after posting; (iii) if sent by fax, at the time of transmission after it is transmitted (provided that an error free transmission report is produced); and (iv) if sent by email on sending provided the sender receives a delivery receipt, but in any case if deemed receipt occurs after Working Hours, or at any time during a day that is not a Business Day, the notice shall then be deemed received at 9am local time on the next Business Day.

Updated 28 September 2011