

AGENCY AGREEMENT

This LeadsOnline LLC AGENCY AGREEMENT ("Agreement"), dated September 1, 2021, ("Effective Date") is made between the City of Glendale, an Arizona municipal corporation acting through the Glendale Police Department ("Agency") and LeadsOnline LLC ("Leads").

SCOPE OF AGREEMENT

Leads operates and maintains an electronic reporting and criminal investigation system for receiving Transaction Data for the use of Law Enforcement Officials in their official duties. Leads acts in the capacity of an agent for such Law Enforcement Agencies for the purpose of collecting, maintaining and providing access to Transaction Data and other records.

Agency desires to utilize Leads' System to support its investigations.

Subject to the terms of this Agreement and in consideration of the mutual covenants stated below, the parties agree as follows:

1. Definitions

- 1.1 "Transaction Data" means all information provided by Reporting Businesses and Law Enforcement Agencies about transactions, including (but not limited to) the transaction number, make, model, property description, serial number, name, address, identification number, telephone number, date of birth and any images recorded during the course of a transaction according to official request, statutory requirement or otherwise.
- 1.2 "GLBA" means the Gramm-Leach-Bliley Act of 1999, together with the Privacy Rule and Safeguards Rule promulgated by the U.S. Federal Financial Institution regulators and the Federal Trade Commission.
- 1.3 "Law Enforcement Agency" means any agency duly authorized by Municipal, State, County or Federal government to enforce laws or investigate crimes.
- 1.4 "Law Enforcement Official" means a person employed and authorized by a Law Enforcement Agency to, in his/her official duties, access Transaction Data and/or submit Transaction Data for official use by Law Enforcement Agencies.
- 1.5 "Leads' System" is Leads' electronic reporting and criminal investigations system for receiving Transaction Data for access by Law Enforcement Officials.
- 1.6 "Reporting Business" shall mean any entity that records Transaction Data regarding (a) the receipt or sale of products regulated by law and (b) the receipt or other disposition of merchandise or materials, and reports such Transaction Data for access by Law Enforcement Officials according to official request, statutory requirement or otherwise.
- 1.7 "Agency Files" means case information electronically transferred by Agency to Leads' System for automated comparison to Transaction Data and Agency Files submitted by other Law Enforcement Agencies.

2. Responsibilities of Agency

- 2.1 Agency agrees that the protection of usernames and passwords used to access Leads services and any Transaction Data accessed via Leads by its Law Enforcement Official is the responsibility of Agency. Agency agrees to maintain such information in a secure manner and to not provide login credentials to any other person.
- 2.2 Agency is responsible for the accuracy of information submitted by Agency's Law Enforcement Officials in registration for Law Enforcement Agency's accounts.
- 2.3 Agency agrees to not share its access to Leads' System with other Law Enforcement Agencies and to not share information retrieved from Leads' System with the exception of disclosure necessary for the purpose of prosecution of crimes within Agency's jurisdiction investigated by Agency.
- 2.4 Agency agrees that accounts will be (a) registered only to individual Law Enforcement Officials employed exclusively by Agency and (b) will be used only by the specific Law Enforcement Official to whom the account is registered and (c) will not be used to access or otherwise provide information from Leads System to other Law Enforcement Agencies.
- 2.5 Agency represents and warrants that it shall only submit, access, use and disclose Transaction Data for use in Agency's official Law Enforcement Agency duties. Agency maintains sole responsibility for activity taking place under its user accounts and is responsible for any use, misuse or disclosure of Transaction Data accessed by its users.
- 2.6 Agency is responsible for securing Transaction Data accessed from Leads' System, and agrees to comply with all applicable statutes, laws and regulations for use and disclosure of non-public personal information, including federal and state Transaction Data security breach laws and the GLBA.
- 2.7 Agency understands and acknowledges that Transaction Data and other records accessible by Law Enforcement Officials via Leads' System contains non-public personally identifiable information that is unrelated to any Agency case. This includes Transaction Data submitted by businesses and Law Enforcement Agencies outside of Agency's jurisdiction and outside of Agency's state. Such Transaction Data and other information may not be eligible for disclosure in response to a public record request according to applicable law. Leads does not grant Agency access to Leads' System for the purpose of searching records to respond to a public records request when Agency did not have the record at the time the public records request was made. If Agency searches Leads' System in response to a request for Public Records, Agency is acting of its own accord.
- 2.8 Agency is responsible for using devices and browsers capable of connecting via an encrypted internet connection.
- 2.9 Agency is responsible for promptly notifying Leads when a user is no longer employed by Agency or is otherwise no longer authorized to access Leads' System.
- 2.10 Agency agrees to promptly notify Leads of any conditions that Agency believes may represent or result from a security incident or vulnerability, including the possible compromise of a user's password. Please send any notifications to privacy@leadsonline.com.

2.11 Agency will pay subscription fees according to the schedule set forth in Attachment 'A' which by this reference is incorporated herein.

3. Responsibilities of Leads

3.1 Leads agrees to operate and maintain the Leads System for the purpose of receiving Transaction Data for access only by Law Enforcement Officials.

3.2 Leads agrees to secure Transaction Data using administrative, technical and physical safeguards as set forth in applicable law, including the GLBA.

3.3 Leads agrees to limit access to Agency Files to authorized Law Enforcement Officials, and shall apply safeguards to protect Agency Files according to standards applicable to the information in Agency Files. Leads agrees to purge all Agency Files according to CJIS standards upon Agency's written request.

3.4 Leads agrees to provide use of Leads' System with the capabilities specified in Attachment 'A'.

4. Conditions for use of Leads' System

4.1 Leads' System and website, including but not limited to written materials, text, graphics, logos, software, functionality, icons and images are the exclusive proprietary property of Leads and are protected under the United States Copyright Act (17 United States Code), as well as by all applicable state and international copyright laws, and by the Lanham Act (15 U.S.C. §§1051-1141n). Agency agrees to abide by any additional copyright notices, trademarks, information, or restrictions contained in any content on Leads' System and website. Leads' System and website may be used solely for the purposes expressly provided for herein, and no aspect of the Leads' System or website may be used for any other purpose whatsoever. Any other use is unauthorized and will constitute an infringement upon the proprietary rights of Leads. No authority to use any content on Leads' System, website, or any other intellectual or other property of Leads not expressly granted by this Agreement shall be implied.

4.2 Agency agrees to not decompile or otherwise copy or use content on the Leads' System or website or other proprietary information of Leads for purposes of reverse-engineering or reconstruction, and to not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices from any materials Agency obtains from Leads' System or website.

4.3 Agency represents it is a Law Enforcement Agency.

4.4 Leads may modify or upgrade any aspect of Leads' System at any time without notice. Leads agrees to make commercially reasonable efforts to perform such modifications in a manner that is not disruptive to Agency.

4.5 Subject to the terms of this Agreement, Agency hereby appoints Leads as its agent for the sole purpose of collecting, maintaining and providing access to Transaction Data from Reporting Businesses. This agency appointment is effective as of the registration date of Agency's initial user. Agency acknowledges that Leads does not enforce laws and only represents Agency in the capacity of receiving Transaction Data from Reporting Businesses and Law Enforcement Agencies and making information available to Law Enforcement Officials via Leads' System.

- 4.6 Leads uses a number of checks to identify inaccurate or incomplete Transaction Data, but cannot and does not represent or endorse the accuracy or reliability of Transaction Data or other information submitted by Reporting Business and Law Enforcement Agencies. Transaction Data is provided by Reporting Businesses and Law Enforcement Agencies according to the laws and practices enforced in Reporting Businesses' jurisdiction using their proprietary operational software.
- 4.7 Leads is not responsible for ensuring the compliance of Reporting Businesses with their Transaction Data reporting obligations.
- 4.8 Agency will not discourage Reporting Businesses from submitting Transaction Data via Leads.
- 4.9 Transaction Data submitted by Reporting Businesses and Transaction Data and limited information from Agency Files submitted by Agency is accessible by Law Enforcement Officials with other Law Enforcement Agencies.

5. Term

- 5.1 This Agreement will become effective as of the Effective Date and remain in effect for five (5) years (the "Initial Term") and any renewal term, or until termination by Leads or Agency as described below.
- 5.2 Neither party is obligated to renew this Agreement.
- 5.3 Following written notice and a cure period of not less than ten (10) days, either party may without further notice, terminate this Agreement if the other party (a) fails to perform any material obligation required under this Agreement or (b) violates any laws, rules or regulations related to this Agreement.
- 5.4 The parties agree that any continuation of this Agreement from one fiscal year to the next is contingent upon annual fiscal appropriation and lawful approval by Agency's governing entity. Agency may terminate this Agreement by providing sixty (60) days' written notice to Leads prior to the next contract year if funding to make the next scheduled payment is not duly appropriated and authorized.

6. Disclaimer and Indemnification

- 6.1 **EXCEPT FOR THE REPRESENTATIONS SET FORTH IN SECTION 3 OF THIS AGREEMENT, LEADS SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS, CONDITIONS, AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, CUSTOM, COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, MERCHANTABILITY, SATISFACTORY QUALITY, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND/OR ANY AND ALL OTHER IMPLIED WARRANTIES AND EXPRESS WARRANTIES (OTHER THAN THOSE SET FORTH HEREIN, IF ANY) WITH RESPECT TO LEADS' SYSTEM. LEADS' SYSTEM, INCLUDING ALL TRANSACTION DATA, CONTENT, SOFTWARE, FUNCTIONS, MATERIALS AND INFORMATION MADE AVAILABLE ON OR ACCESSED THROUGH LEADS' WEBSITE IS PROVIDED, AND ACCEPTED AND/OR USED, "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND.**

- 6.2 LEADS IS NOT LIABLE FOR ANY DAMAGES SUFFERED BY AGENCY OR ALLEGED BY ANY THIRD PARTY ARISING FROM AGENCY'S USE OF LEADS' SYSTEM UNLESS THERE IS A SHOWING OF GROSS NEGLIGENCE OR WILFUL MISCONDUCT BY LEADS.
- 6.3 IN NO EVENT SHALL LEADS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, DOWNTIME COSTS, LABOR COST, OVERHEAD COSTS OR CLAIMS OF A REPORTING BUSINESS, ITS AFFILIATES OR ANY OTHER THIRD PARTY, EVEN IF LEADS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 6.4 AT AN ABSOLUTE MAXIMUM, LEADS LIABILITY SHALL BE LIMITED TO THE AMOUNT OF MONEY IT IS PAID BY AGENCY TO LEADS.
- 6.5 Leads shall indemnify, hold harmless, protect and defend Agency and its officials, officers, employees, agents and authorized volunteers (the "Indemnified Parties") from and against all losses, liabilities, judgments, costs, expenses, damages (including damages to the Leads' System), attorney's fees, and other costs, including all costs of defense, arising from all suits of law or actions of every nature for or on account of the infringement of any patents, trademarks, or copyrights of any other party by reason of the use or integration of any proprietary software, equipment, devices or processes, originally incorporated, or provided and used, by Leads in the performance of the services provided under this Agreement. Notwithstanding the foregoing, this paragraph shall not apply if the foregoing described losses, liabilities, judgments, costs, expenses, damages and the like arise from the misuse of Leads' System or Transaction Data or any other breach of this Agreement by Agency.
- 6.6 Agency shall ensure that any local law, instructions or directive given by Agency or Agency's Law Enforcement Officials related to Reporting Businesses ("Agency Directives") do not conflict with applicable laws. **LEADS SHALL NOT, UNDER ANY CIRCUMSTANCE, BE RESPONSIBLE OR LIABLE FOR ANY THIRD-PARTY CLAIM ARISING OUT OF OR IN ANY WAY CHALLENGING THE ENFORCEABILITY OR VALIDITY OF SUCH AGENCY DIRECTIVES OR APPLICABLE LAWS.**
- 6.7 The parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of either party.
- 6.8 The parties agree that no provision of this Agreement extends the either party's liability beyond the liability provided in applicable law, and no provision of this Agreement shall be considered a waiver by either party of any right, defense, or immunity available according to applicable law.

7. Miscellaneous

- 7.1 Neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to causes beyond its reasonable control, including any act that would be considered force majeure.
- 7.2 If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this Agreement, unless either party deems the unenforceable provision to be essential to this Agreement, in which case either party may terminate this Agreement, effective immediately upon notice to the other party.

- 7.3 The parties reserve the right to disclose any information in response to a duly authorized subpoena.
- 7.4 Any waiver by either party of a breach of any provision of this Agreement by the other party or delay in enforcing any rights shall not operate or be construed as a waiver of any other or subsequent breach by such party.
- 7.5 The parties acknowledge that all services provided under this Agreement are performed from Leads' facilities, and Leads does not physically come to Agency for purposes of providing any services related to this Agreement.
- 7.6 This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, between the parties relating to the subject matter hereof. This Agreement may not be modified, changed or discharged, in whole or in part, except by an agreement in writing signed by both parties. The mere acceptance of any work order, purchase order or other document containing provisions purported to modify or enlarge the obligations or liabilities of either party shall not be construed as acceptance of such provisions.
- 7.7 Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Agreement. There are no third-party beneficiaries to this Agreement. The only persons who may enforce or benefit from this Agreement and any rights under this Agreement are Agency and Leads.
- 7.8 This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to conflicts of laws provisions. Sole and exclusive jurisdiction and venue for any action or proceeding arising out of or related to this Agreement shall be an appropriate state or federal court located in Maricopa County, Arizona.
- 7.9 Neither party will assign its rights or duties under this Agreement without first providing written notice to the other party with at least 30 days to object to such assignment and in doing so, immediately terminate the Agreement without penalty.
- 7.10 Immigration Law Compliance. The parties agree, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to its employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 7.11 Non-Discrimination Policies. The parties agree that they must not discriminate against any employee or applicant for employment based on race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability.
- 7.12 No Boycott of Israel. The Parties agree that they are not currently engaged in and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393. Unless and until the District Court's injunction in Jordahl v. Brnovich, 336 F. Supp.3d 1016 (D.Ariz.2018) is stayed or lifted, the Anti-Israel Boycott Provision (A.R.S. §35-393.01 (A)) (if applicable to this agreement) is unenforceable and the City will take no action to enforce it.

LEADS

LeadsOnline LLC

Signature:  _____

Print Name: David K. Finley

Title: President & CEO

Date: 3/18/2021

Address: 6900 Dallas Parkway, Suite 825
Plano, TX 75024-4200

Tax ID: 42-1720332

ATTEST:

Julie K. Bower, (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey,
City Attorney

AGENCY

City of Glendale, Arizona

Signature: _____

Print Name: Kevin R. Phelps

Title: City Manager

Date: _____

Address: **5850 W. Glendale Ave**
Glendale, AZ 85301

AGENCY AGREEMENT – Attachment ‘A’

SCOPE OF WORK AND ANNUAL SUBSCRIPTION FEE

LeadsOnline System Capability	PowerPlus
Online reporting system for all pawn/secondhand stores and scrap metal recyclers	✓
Unlimited accounts/searches for your personnel working your cases	✓
Images of property, sellers, vehicles, thumbprints, etc. as reported	✓
Legacy data import (from existing in-house database)	✓
Updates, training and support for agency personnel and businesses	✓
Transaction Monitor – Audit system for reporting compliance	✓
ReportIt citizen property inventory system	✓
Automated NCIC/stolen property hits	✓
Message Inbox (alerts and communication to and from businesses)	✓
Daily Stats (hits and statistics for each investigator)	✓
Property Hold Management System	✓
Nationwide search access	✓
Saved (continuous) searches/Email hit alerts	✓
eBay First Responder Service	✓
OfferUp Search Listings	✓
Public Classified Ads – Craigslist	✓
Persons of Interest inter-agency suspect information system	✓
Suspect variations and associations reports	✓
Statement Analyzer	✓
Submit lists of known suspects and/or property (file upload)	✓
Phone Forensics Search	✓
CompStat Mapping System	✓
Annual subscription fee due on September 1, 2021 and on or before each anniversary thereof during the Initial Term. Increases will be limited to 3% annually during the Initial Term. Subscription fee after the Initial Term will be invoiced according to then-current pricing and is due within 30 days of renewal.	\$21,984