

AGENCY AGREEMENT

This LeadsOnline, Inc. AGENCY AGREEMENT ("Agreement"), dated, **November 15, 2011**, is made between **Kittitas County, WA Sheriff's Office** ("County") and **LeadsOnline LLC** ("Leads").

SCOPE OF AGREEMENT

Leads operates and maintains at its web site a confidential investigations system accessible electronically exclusively by Law Enforcement Agencies for the sole purpose of identifying merchandise and/or persons suspected to have been involved in crimes.

County desires to utilize the electronic 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:

I.

DEFINITIONS

- 1.1 **"Authorized Officials"** means duly authorized law enforcement personnel of County.
- 1.2 **"Data"** includes but is not limited to the ticket number, item number, make, model, property description and serial number of merchandise sold to a Dealer or used as loan collateral by a Secondhand Dealer, and other non-public personal information pertaining to any customer(s) involved in the aforementioned transactions (including for example, customers' names, addresses, identification numbers and any images collected by Dealer during course of a transaction).
- 1.3 **"Law Enforcement Agency"** means any municipal, county, state or federal government staffed and operated agency whose primary purpose is criminal investigation and/or law enforcement.
- 1.4 **"Secondhand Dealer"** means any person or entity that purchases pre-owned personal property other than Scrap Metal and/or uses personal property as loan collateral and furnishes Data relative thereto to Leads for inclusion in Leads' database.
- 1.5 **"Scrap Metal Dealer"** means any person or entity that purchases ferrous or nonferrous metal that is no longer used for its original purpose and is capable of being processed for reuse by a metal recycling facility, and furnishes Data relative thereto to Leads for inclusion in Leads' database.
- 1.6 **"Scrap Metal"** includes materials purchased by Scrap Metal Dealers including but not limited to iron, brass, wire, cable, copper, bronze, aluminum, platinum, lead, solder, steel, catalytic converters.

- 1.7 "Dealer" means Secondhand Dealer and/or Scrap Metal Dealer as specified in Attachment "A". If either Secondhand Dealer or Scrap Metal Dealer is not specified in Attachment "A", only the specified Dealer type will apply.

II. APPOINTMENT

- 2.1 Subject to the terms of this Agreement, County hereby appoints Leads, an independent contractor, as its agent, as such term is utilized in the Gramm-Leach-Bliley Act of 1999 (the "GLBA"), for the sole purpose of collecting, maintaining and disseminating Data from Dealers. This agency appointment is effective as of the registration date of County's initial user and will terminate upon termination of this Agreement.
- 2.2 Leads acknowledges it is an independent contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by Leads as an independent contractor.

Leads acknowledges that the entire compensation for this Agreement is specified in Attachment "B" and the Leads is not entitled to any County benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to Kittitas County employees.

III. AGREEMENTS AND RESPONSIBILITIES OF COUNTY

- 3.1 County agrees that County's use of the Data displayed at Leads' web site will be for the purpose of identifying stolen merchandise and/or persons suspected of involvement in crimes.
- 3.2 County agrees to not divulge Data or information obtained through County's access to Leads' web site to anyone other than Authorized Officials and persons with County's agency entitled to receive the Data or information pursuant to statute, rule or regulation, including specifically the GLBA.
- 3.3 County agrees to not access information from Leads' web site for purposes of gathering information from outside of County's jurisdiction for any third party, including private parties and other law enforcement agencies.
- 3.4 County agrees that passwords provided by Leads to County enabling County to utilize Leads' web site will be made known only to Authorized Officials of County and that only those Authorized Officials will be permitted to use the passwords or otherwise access the electronic system at Leads' web site. County will notify Leads when Authorized Officials leave the agency, change duties, or are otherwise no longer authorized to access Leads' investigations system.

- 3.5 County agrees not to use the Data or information displayed at Leads' web site for any unlawful purpose, or in any manner, which may create liability for Leads or Dealers. County agrees its use of the Data or information contained at Leads' web site will not be other than as permitted by law or the rights duly granted to County in carrying out County's official duties.
- 3.6 County agrees to act in accordance with laws and procedures within Dealer's jurisdiction, and agrees to notify the designated Law Enforcement Agency for Dealer's jurisdiction prior to requesting additional information about Data, to place an item on hold status, or to confiscate an item found in a business outside of County's jurisdiction.
- 3.7 County agrees to submit accurate information, including but not limited to valid identity of Authorized Officials establishing accounts to access the system and County case numbers for specific items and/or suspects in conducting any search or use of Leads' web site.
- 3.8 County agrees it has no ownership rights to any password or user name that may be utilized by County pursuant to this Agreement. For security purposes, County agrees to change its password(s) every 90 days.
- 3.9 County is responsible for insuring that County's hardware can connect to Leads' website via the Internet.
- 3.10 County is responsible for insuring compliance among businesses in County's jurisdiction. County agrees to not discourage Dealers from furnishing Data to Leads.

IV.

AGREEMENTS AND RESPONSIBILITIES OF LEADS

- 4.1 Leads agrees to operate and maintain an electronic investigations system at its web site for the purpose of receiving and disseminating Data from Dealers for the use of Law Enforcement Agencies.
- 4.2 Leads agrees to provide system capabilities in accordance with Attachment "A" attached to this Agreement.
- 4.3 Leads agrees to implement commercially reasonable efforts to maintain County's access to Leads' web site. From time to time, maintenance will be required to be performed, as well as developments and modifications to Leads' web site and on Leads' infrastructure. County acknowledges that Leads has no responsibility for the service or operation of the Internet or for County's ability to connect to the internet, and that Leads makes no representations in this regard. Internet service is subject to limitations caused by local landlines, atmospheric or technical conditions and may be temporarily unavailable, limited, interrupted or curtailed.
- 4.4 Leads agrees to facilitate County's access to the Data by passwords and user names selected by County within reasonable parameters established by Leads.
- 4.5 Leads agrees to provide County with secure access to a report detailing the usage of

Leads' web site by Authorized Officials.

- 4.6 Leads' client support and training is available to County at no additional cost when performed by telephone or email between the hours of 7:30 AM and 5:30 PM Central Time. County may request Leads to travel to County's location for specialized training and support. Special services including after-hours support and on-site training may be provided upon mutual agreement, and may include rates for time, materials, travel, and miscellaneous expenses as agreed upon by the parties.
- 4.7 Leads shall abide by all laws, rules, and regulations when performing under this contract.
- 4.8 Leads represents and warrants to the County as follows:
 - 4.8.1 Leads is duly incorporated and validly existing. Leads is in good standing under the laws of the State of Washington, and has all requisite corporate power and authority to enter into and to perform its obligations under this Agreement.
 - 4.8.2 Leads has the authority to execute this Agreement, to make the representations and warranties set forth in it and to perform the obligations of Leads under this Agreement in accordance with its terms.
 - 4.8.3 This Agreement has been validly executed by an authorized representative of Leads and constitutes a valid and legally binding and enforceable obligation of Contractor.
 - 4.8.4 Leads has or will obtain prior to the commencement date such licenses, permits and other authorizations from federal, state and other governmental authorities, as are necessary for the performance of its obligations under this Agreement.
 - 4.8.5 Leads is not in violation of any applicable law, ordinance or regulation the consequence of which will or may materially affect Lead's ability to perform its obligations under this Agreement. Leads is not subject to any order or judgment of any court, tribunal or governmental agency which materially and adversely affects its operations or assets in the State of Washington, or its ability to perform its obligations under this Agreement.
 - 4.8.6 None of the representations or warranties in this Agreement, and none of the documents, statements, certificates or schedules furnished or to be furnished by Leads pursuant hereto or in connection with the performance of the obligations contemplated under this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading

V.

CONDITIONS FOR COUNTY'S ACCESS AND USE OF LEADS' WEB SITE

- 5.1 By entering into this Agreement, County represents it is a Law Enforcement Agency as that term is defined in Section I. County's appointment of Leads, and independent contractor, as agent is made in order to obtain information of a financial institution in connection with the performance of the official duties of County, as is contemplated by the GLBA.
- 5.2 Leads may modify or upgrade any aspect(s) of Leads' web site at any time without notice to County.
- 5.3 All Data is provided solely by Dealers using Dealers' proprietary operational software according to the laws and practices enforced in Dealer's jurisdiction. Therefore, Leads cannot and does not represent or endorse the completeness, accuracy or reliability of the Data displayed through Leads' web site, nor the functionality of Dealer's operational software. County acknowledges that any reliance by County or any Law Enforcement Agency upon any Data or other information displayed or distributed through Leads' web site shall be at County's sole risk.
- 5.4 Leads reserves the right at all times to disclose any information as necessary to satisfy any law, regulation, or government request, or to edit, refuse to post or to remove any Data or information, in whole or in part, that in Leads' sole discretion is inaccurate, incomplete or is in violation of local, state and/or federal law. Leads agrees to preserve all Data for the minimum duration set forth in County's retention schedules, and agrees to limit its disclosure of Data to the purposes set forth in the Scope of this Agreement.

VI.

TERM

- 6.1 This Agreement will become effective as of the date first set forth above and remain in effect through November 14, 2012 or until termination by Leads or County as described below.
- 6.2 This Agreement may be renewed for successive additional one-year terms upon mutual agreement of the parties prior to the expiration of the initial term or any renewal term thereafter. In the event of renewal, County agrees to pay Leads an annual subscription fee for the renewal period within 30 days of invoice.
- 6.3 County may immediately and without notice, terminate this Agreement, at County's sole option, if Leads fails to perform any material obligation required of Leads under this Agreement; or (c) violates any laws, rules or regulations. If termination occurs under this paragraph, Leads shall remit to County on a pro-rated basis that portion of the annual subscription fee paid by County from the date Leads commits any breach described above until the end of the applicable one (1) year term or renewal term.
- 6.4 Leads may immediately and without notice, terminate this Agreement for cause, at Leads' sole option, if County: (a) fails to pay any annual subscription fee owed to Leads within 30 days of invoice; (b) fails to perform any material obligation required of County under this Agreement; (d) violates any laws, rules or regulations.

- 6.5 Leads may immediately and without notice terminate this agreement if in Leads' sole discretion, Leads determines that providing County with access to Leads' system creates liability for Leads. If termination occurs under this paragraph, Leads shall remit to County on a pro-rated basis that portion of the annual subscription fee paid by County from the date of termination until the end of the applicable one (1) year term.
- 6.6 County may immediately and without notice, terminate this Agreement for convenience. If such termination for convenience occurs, Leads shall not remit to County any refund of the annual subscription fee.

VII.

DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

- 7.1 **LEADS SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS, CONDITIONS, AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO LEADS' WEB SITE AND LEADS' SERVICES TO BE ACCESSED, USED OR DELIVERED PURSUANT TO THIS AGREEMENT. LEADS' WEB SITE, INCLUDING ALL DATA, CONTENT, SOFTWARE, FUNCTIONS, MATERIALS AND INFORMATION MADE AVAILABLE ON OR ACCESSED THROUGH LEADS' WEB SITE IS PROVIDED "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. LEADS DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN LEADS' WEB SITE OR ANY DATA, MATERIALS OR CONTENT CONTAINED THEREIN WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE LEADS' WEB SITE OR THE SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. LEADS SHALL NOT BE LIABLE IN ANY MANNER OR IN ANY RESPECT FOR THE USE OF LEADS' WEB SITE BY COUNTY, INCLUDING, WITHOUT LIMITATION, FOR THE ABSENCE OR PRESENCE OF DATA OR CONTENT OR ANY ERRORS CONTAINED THEREIN.**

VIII.

INDEMNIFICATION

- 8.1 Leads shall not be liable for any claims, damages and attorney fees arising from the negligent or illegal acts of County's employees arising out of or related to County's use of Leads' web site.

County shall not be liable for any claims, damages and attorney fees arising from the negligent or illegal acts of Leads' employees arising out of or related to operation or use of Leads' website. If both Leads and County are liable for any claims, damages or attorney fees arising from the negligent or illegal acts of the employees of Leads and County under this Agreement, Leads and County shall be liable for the portion of the claims, damages and attorney fees that arise from the negligent or illegal acts of that party as determined by the court adjudicating the matter or as agreed in any settlement. 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.

Leads shall indemnify, hold harmless, protect and defend County 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

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 trade secrets, patents, trademarks, copyrights or other proprietary right of any other party by reason of the use or integration of any proprietary materials, 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, if the foregoing described losses, liabilities, judgments, costs, expenses, damages and the like arise due to the misuse of the Data or any other breach of this Agreement by County, Leads' liability under this paragraph 8.1 shall be reduced proportionately by the amount of loss, liability, judgment, cost, expense, damage and the like arising due to such misuse or breach by County.

IX.

COPYRIGHT/REVERSE ENGINEERING/RECORDS REQUESTS

- 9.1** Leads' web site is protected by copyright as a collective work and/or compilation, pursuant to U.S. copyright laws. The contents of Leads' web site are only for the purpose described herein. All materials contained on Leads' web site are protected by copyright, and are owned or controlled by Leads or the party credited as the Leads of the content. County will abide by any additional copyright notices, information, or restrictions contained in any content on Leads' web site.
- 9.2** County agrees not to decompile or otherwise copy or use the Leads' web site for purposes of reverse engineering or reconstruction, and will not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership form any materials it obtains from Leads or Leads' system.
- 9.3** Data is not considered by the parties to fall into the category of public record unless otherwise specified by law in County's jurisdiction. If Leads receives a request for records from parties other than Law Enforcement Agencies, courts, or other official sources regarding County personnel or Data from County's jurisdiction, Leads will refer the request to County. If any third party requests County to provide information involving Leads' materials or Data, County will make reasonable efforts to limit disclosure to that which is specifically required by law to be disclosed. County will obtain, to the extent possible, confidential treatment for information by any authority requiring delivery of information.

X.

MISCELLANEOUS

- 10.1** Leads may assign or delegate all or part of Leads' rights or duties under this Agreement upon written consent of County, which shall not be unreasonably withheld. County may not make any assignment of this Agreement without Leads' prior written consent, which will not be unreasonably withheld.
- 10.2** 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 Leads deems the unenforceable provision to be essential to this Agreement, in which case Leads may terminate this Agreement, effective immediately upon notice to County.
- 10.3** 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, such as natural catastrophes, governmental acts or omissions, laws or regulations, labor strikes or difficulties, transportation stoppages or slow-downs.

- 10.4** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of laws provisions. Sole and exclusive jurisdiction for any action or proceeding arising out of or related to this Agreement shall be in an appropriate state or federal court located in the State of Texas.
- 10.5 Right to Review.** This contract is subject to review by any Federal or State auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the County. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluation by service recipients under this Agreement. Leads shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 6 years after contract termination, and shall make them available for such review, within Kittitas County, State of Washington, upon request.
- 10.5** This Agreement constitutes the entire agreement between the parties, and shall supersede all prior agreements and understandings, if any, between the parties respecting the subject matter hereof.

LEADS

LeadsOnline LLC

Signature: _____



Print Name: David K. Finley

Title: President & CEO

Date: _____

1/27/2012

Address: 15660 N. Dallas Pkwy., Suite 800

Dallas, Texas 75248

Federal Tax I.D. # 42-1720332

COUNTY

Kittitas County Sheriff's Office

Signature: _____

Print Name: _____

Title: _____

Date: _____

Address: 306 Umptanum rd.

Ellensburg, WA 98926

AGENCY AGREEMENT – Attachment 'A'

POWERPLUS PACKAGE INCLUDES:

- Online reporting system for all Secondhand Dealers
- Accounts for an unlimited number of Authorized Officials
- Images of property, sellers, vehicles, thumbprints, signatures as provided by reporting businesses
- System updates, training and support for Authorized Officials, Secondhand Dealer personnel, and Scrap Metal Dealer personnel
- Store monitor compliance tools
- Three (3) years history plus current year (Free archive retrieval for cold cases)
- Report It citizen property inventory system
- NCIC automated stolen property reports
- Nationwide search access to transaction Data from Secondhand Dealers
- Hit alerts to mobile phones
- BOLO (continuous, saved) searches (75 entries)
- eBay First Responder Service
- Persons of Interest (POI) Inter-agency communication system (2,000 entries)
- Online reporting system for all scrap metal dealers
- Nationwide search access to transaction Data from Scrap Metal Dealers
- CompStat mapping System
- Access to LeadsOnlabs MethMonitor

AGENCY AGREEMENT – Attachment 'B'

PRICING

Service through November 14, 2012:

POWERPLUS SERVICE PACKAGE: \$2,848

OTHER TERMS

Payment is due upon execution of this Agreement.

Pricing for the first renewal term will be the same as pricing listed in this Attachment B.

Taxes

Leads understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, Leads authorizes the County to make withholding for any taxes other than income taxes (i.e. Medicare). All compensation received by Leads will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of Leads to make the necessary estimated tax payments throughout the year, if any, and Leads is solely liable for any tax obligation arising from Leads' performance of this Agreement. Leads hereby agrees to indemnify the County against any demand to pay taxes arising from Leads' failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. Leads must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on Leads' gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.