



## LOVESTOCK & LEAF APPLICATION LICENCE AGREEMENT

### 1 Acceptance

- a Lovestock & Leaf delivers applications built with love and passion to power-up your helpdesk.
- b L&L Holdings Pty Ltd ACN 606 036 659 (**we or us**) own or licence the software application, including all instructions in hard copy or electronic form and any automatic update, modification or release of any part of that software (**Software**) which is accessible by downloading the application (**App**) from our website at <https://www.lovestockleaf.com/zendesk/zendesk-apps/> (**Site**) and/or the Zendesk marketplace at [www.zendesk.com/apps](http://www.zendesk.com/apps) (**Zendesk Marketplace**).
- c This Agreement sets out the terms and conditions upon which we agree to grant you a right to use the Software and provide any other services as set out in this Agreement.
- d This Agreement is binding on you from the earlier date (**Effective Date**) on which you accept this Agreement until the date on which your Account is terminated in accordance with this Agreement (**Term**).
- e If the processing of any of your employees', contractors' or customers' Personal Information (**Company Personal Data**) is governed by the General Data Protection Regulation 2016/679 (**GDPR**), the additional terms in our Data Processing Schedule (**DPS**) in the Appendix, apply and form part of this Agreement.
- f You accept this Agreement by clicking a box indicating acceptance.
- g By accepting this Agreement, downloading or installing the Software, you:

- 1 warrant to us that you have reviewed this Agreement including the DPS where applicable to you and our Privacy Policy, available on our Site and the Zendesk Marketplace where our App is displayed;
- 2 warrant to us that you have the legal capacity to enter into a legally binding agreement and you are over 18 years of age;
- 3 warrant to us that you have the authority to act on behalf of any person or entity for whom you are using the

Software and you are deemed to have agreed to this Agreement on behalf of any entity for whom you use the Software;

- 4 warrant to us that you have all hardware, software and services which are necessary to access and use the Software; and
- 5 agree to use the Software in accordance with this Agreement.

### 2 Download, Installation and Accounts

- (a) Upon the purchase of the Software for the period of time specified on the Site or on the Zendesk Marketplace and any renewal of that period (the initial licence period and the renewal licence period, together the **Licence Period**), you will be able to download and install the Software and create an account (**Account**), including choosing a username and password.
- (b) It is your responsibility to keep your Account details confidential. You are responsible for all activity on your Account, including activity by Agents and for ensuring that any activities on your Account comply with this Agreement.
- (c) You agree that we are a software provider and we are not responsible for the management or administration of your Account.

### 3 Software Licence

- (a) In consideration for payment of the fees as set out on the Site or the Zendesk Marketplace (**Fees**), we grant you a non-exclusive, non-transferable (except with our written permission), non-sublicensable (except as otherwise permitted under this Agreement), personal and revocable licence to download and install one instance of the Software (being one Account) for the Licence Period (**Licence**).

### 4 Restrictions

- (a) You must not (and must ensure your Agents do not) access or use the Software except as permitted by the Licence and you must not and must not permit any other person to:
  - (1) use the Software in any way which is in breach of any applicable Laws or which infringes any person's rights, including Intellectual Property rights;

- (2) use the Software to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
- (3) use the Software to circumvent user authentication or security of any of your networks, accounts or those of third parties.

## 5 Third Parties

- (a) You acknowledge and agree that:
  - (1) the provision of the Software may be contingent on, or impacted by, third parties such as the Zendesk Marketplace, Zendesk's other services, other customers' use of our services, suppliers, other subcontractors (**Third Party Inputs**); and
  - (2) despite anything to the contrary, to the maximum extent permitted by law, we will not be responsible, and will have no Liability, for any default or breach of this Agreement or law, if such default or breach was caused or contributed to by any Third Party Inputs.
- (b) You acknowledge that the Software includes certain optional functionality that may interface or interoperate with third party software or services, including Zendesk's software and services. To the extent that you choose to use such functionality, you are responsible for: (i) the purchase of, (ii) the ancillary requirements related to, and (iii) the licensing obligations related to the applicable third party software and services. It is your responsibility to ensure the requirements are met in order for you to benefit from the specific functionality made available to you.
- (c) This clause will survive the termination or expiry of this Agreement.

## 6 Support Services

- (a) During the Licence Period, we will provide you with technical support services via email or telephone, provided that where required, you assist us in investigating and ascertaining the cause of the fault and provide us with access to all necessary information relevant to the fault (including what you have done in relation to the fault). Technical support services are provided during Business Hours on Business Days.

## 7 Privacy

- (a) You acknowledge and agree that you are responsible for the collection, use, storage and otherwise dealing with Personal

Information related to your business and all matters relating to the Data.

- (b) You will comply and ensure that all of your Personnel and Agents comply with the requirements of any applicable privacy laws (such as the Privacy Act and the GDPR) in respect of all Personal Information collected, used, stored or otherwise dealt with under or in connection with this Agreement.

## 8 Warranties

- (a) You warrant and agree that:
  - (1) there are no legal restrictions preventing you from agreeing to this Agreement;
  - (2) you are responsible for obtaining any consents, licences, authorities and permissions from other parties necessary for the Software to be provided in accordance with this Agreement, at your cost, and for providing us with the necessary consents, licences, authorities and permissions upon request;
  - (3) you will maintain the confidentiality and security of any of your Account details or passwords;
  - (4) if applicable, you hold a valid ABN which has been advised to us; and
  - (5) if applicable, you are registered for GST purposes.

## 9 Payment

- h You must pay us the Fee for your Licence for the Licence Period (usually 1 month or 12 months) and any other amount payable to us under this Agreement, without set off or delay, via credit card or any other payment method set out on the Site or Zendesk Marketplace or otherwise agreed with you.
- i The Fee for your Licence takes into account the number of Agents using the Software. If there is a variation in the number of Agents you must notify us as soon as you become aware of this variation and the Fee for your Licence will be subject to a variation based on the Fee per Agent as set out for your Licence on the Site or the Zendesk Marketplace. The varied Fee will be applied to your next month's bill for month-to-month Licences and will be invoiced at the time of the variation for Licences with a Licence Period of more than 1 month. There are no downgrades for Licences of more than 1 month.
- j All Licences will automatically renew at the end of the initial Licence Period or any renewed Licence Period thereafter, for the same initial Licence Period (**Renewal**

**Licence Period**) unless you terminate your Account in accordance with clause 12. Prior to the renewal date for a Licence Period of more than 6 months, we will discuss and may renegotiate the terms of the Licence with you before the renewal, including the Fee.

- k** Your Licence may begin with a free trial period, designed to allow you to evaluate our Software (**Free Trial Period**) and make sure it is right for you. Any Free Trial Period (and the features available during this period) can change at any time without notice. We have the right to terminate any Free Trial Period Account if you are found to be misusing the Software. If you do not cancel during the Free Trial Period, the Licence you have chosen and its Fee will start once your Free Trial Period ends.
- l** Any free sandbox versions of the Software (**Sandbox Software**) are provided to you subject to your payment of the Fee for the corresponding paid version of the Software, and are subject to your use in accordance with this Agreement. Sandbox Software can change or be terminated at any time without notice.
- m** The Fee is non-refundable. To the maximum extent permitted by law, there will be no refunds or credits for any unused Licence Period (or part thereof), or unused Accounts.
- n** All Fees are stated in Australian dollars and exclude GST (where applicable). You are responsible for all taxes, levies or duties imposed by taxing authorities in your own country, and you shall be responsible for payment of them. We have no responsibility to them on your behalf.
- o** The Fee is subject to change upon 30 days' notice from us to you and will apply to the next Licence Period. Such notice may be provided at any time via email or via a notification to your Account. If you do not agree to the Fee change, you may cancel your Account in accordance with clause 12.

## 10 Intellectual Property Rights

### Our Intellectual Property

- (a)** All Intellectual Property in the Software and App and that Intellectual Property developed, adapted, modified or created by us or our Personnel (including in connection with this Agreement, the Software and the App and any machine learning algorithms output from the Software) is and will remain owned or licensed exclusively by us or our third party service providers.
- (b)** You must not, without our prior written consent (except as may be permitted by licensing terms governing the use of any open source code which may be included in the Software):

- (1)** copy or use, resell, assign or transfer in whole or in part, any of our Intellectual Property;
- (2)** reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of our Intellectual Property to any third party;
- (3)** reverse assemble, reverse engineer, reverse compile or enhance the Software;
- (4)** breach any Intellectual Property Rights connected with the Software, including altering or modifying any of our Intellectual Property or any third party;
- (5)** cause any of any of our Intellectual Property to be framed or embedded in another website; or creating derivative works from any of our Intellectual Property;
- (6)** "frame", "mirror" or serve any of the Software on any web server or other computer server over the Internet or any other network; or
- (7)** alter, remove or tamper with any trademarks, any patent or copyright notices, any confidentiality legend or notice, any numbers or any other means of identification used on or in relation to the Software.

### Your Intellectual Property

- (c)** As between you and us, (i) all Data is and remains your property, and (ii) you retain any and all rights, title and interest in and to the Data, including all copies, modifications, extensions and derivative works thereof.
- (d) Licence:** You grant us a limited licence to copy, transmit, store and back-up or otherwise access the Data during the Licence Period solely to:
  - (1)** diagnose problems with the Software;
  - (2)** meet our legal obligations; or
  - (3)** as otherwise reasonably required to perform our obligations under this Agreement.
- (e) General:** You must, at all times, ensure the integrity of the Data and that your use of the Data is compliant with all Laws. You represent and warrant that: (i) you have obtained all necessary rights, releases and

permissions to provide all your Data to us and to grant the rights granted to us in this Agreement; and (ii) the Data and its transfer to and use by us, as authorised by you under this Agreement do not violate any Laws (including those relating to export control and electronic communications) or rights of any third party, including any Intellectual Property rights, rights of privacy, or rights of publicity, and any use, collection and disclosure authorised in this Agreement is not inconsistent with the terms of any applicable privacy policies.

- (f) We assume no responsibility or Liability for the Data. You are solely responsible for the Data and the consequences of using, disclosing, storing or transmitting it.
- (g) This clause will survive termination or expiry of this Agreement.

## 11 Liability

- (a) Despite anything to the contrary, to the maximum extent permitted by law:
  - (1) our maximum aggregate Liability arising from or in connection with this Agreement (including the Software or the subject matter of this Agreement) will be limited to, and must not exceed the total amount of Fees you paid to us in the 12 month period directly preceding the date on which such Liability arose; and
  - (2) we will not be liable to you for any Consequential Loss, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.
- (b) Despite anything to the contrary, to the maximum extent permitted by law, we will have no Liability, and you waive and release us from and against, all Liability (whether under statute, contract, negligence or other tort, indemnity, or otherwise) arising from or in connection with any:
  - (1) loss of, or damage to, any property or any injury to or loss to any person;
  - (2) failure or delay in providing the Software or support services;
  - (3) breach of this Agreement or any Laws; or
  - (4) unavailability, outage or interruption of the Software or your Computing Environment, where caused or contributed to by any:
    - (5) Force Majeure Event;

- (6) a fault, defect, error or omission in your Computing Environment or Data; or
- (7) act or omission of you, your related parties, Agents, Personnel or any third party (including customers, end users, suppliers, providers or subcontractors),

and, in any event, any error, omission or lack of suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the Software.

- (c) To the maximum extent permitted by law, you indemnify and continue to indemnify us against all Liability we suffer or incur arising from or as a consequence of a breach of clause 7 (Privacy), clause 9 (Intellectual Property) and your Agents' use of the Software contrary to this Agreement, including from any claim relating to the Data.
- (d) Certain legislation, including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to our provision of our services which cannot be excluded, restricted or modified (**Statutory Rights**). Nothing in this Agreement attempts to exclude, restrict or modify your Statutory Rights as a consumer under the ACL. Any and all other warranties or conditions which are not guaranteed by the ACL are expressly excluded where permitted, except to the extent such warranties and conditions are fully expressed in this Agreement.
- (e) You acknowledge and agree that:
  - (1) you are responsible for all users using the Software, including your Personnel and any Agents;
  - (2) you use the Software and any associated programs and files at your own risk;
  - (3) we do not warrant that the Software is error-free or will be uninterrupted;
  - (4) we do not warrant that our Software will be compatible with any feature or program provided by Zendesk or otherwise acquired from the Zendesk Marketplace;
  - (5) our Software may integrate with or rely on software or services of third party service providers. If the providers of third party software or services cease to make their services or programs available on reasonable terms, we may

- cease providing any affected features;
- (6) we do not guarantee that any file or program available for download and/or execution is free from viruses or other conditions which could damage or interfere with Data, hardware or software with which it might be used;
- (7) we are not responsible for the integrity or existence of any Data on the Software, Computing Environment, network or any device controlled by you or your Agents; and
- (8) we may pursue any available equitable or other remedy against you if you breach any provision of this Agreement.

(f) This clause will survive termination or expiry of this Agreement.

## 12 Termination

- (a) Where you have a month-to-month Licence Period you may terminate this Agreement by providing us notice via your Account management or by emailing our support staff and the Licence will terminate at the end of the then current Licence Period. No refunds will be given upon termination in accordance with this clause.
- (b) Where you have a current Licence Period of more than 1 month, you may terminate this Agreement by providing us 60 days' notice prior to the end of your Licence Period via your Account management or by emailing our support staff and the Licence will terminate at the end of the then current Licence Period. No refunds will be given upon termination in accordance with this clause.
- (c) We may terminate this Agreement at the end of any Licence Period by providing you 10 days' notice.
- (d) To the extent permitted by law, either Party may terminate this Agreement immediately, if the other Party:
  - (1) has breached a material term of this Agreement which is not capable of remedy;
  - (2) has breached a material term of this Agreement and has failed to remedy such breach within 30 days of receiving notice to do so, subject to any other express right of termination; or
  - (3) is unable to pay its debts as they fall due.

## 13 On termination of this Agreement:

- (1) we will disable the Software;

- (2) you agree that any payments made are not refundable to you; and
- (3) you must pay all amounts due and payable under this Agreement, including under an indemnity, within 5 Business Days of termination.

## 14 General

- (a) Our Software will be provided to you on a non-exclusive basis.
- (b) We reserve the right at any time and from time to time to change or remove features of any new versions of the Software provided that, where there is any material alteration to the functionality of the Software in accordance with this clause, we will provide you with 30 days' notice and you may decide to terminate this Agreement by written notice without Liability to us.
- (c) **GST:** Where GST is payable on the supply, you must pay an amount equal to the GST payable on the supply at the same time as you pay the Fee.
- (d) **Subcontracting:** We may engage subcontractors to provide the Software and any updates or upgrades on our behalf.
- (e) **Confidentiality:** Each Party will (and will ensure their Personnel) keep confidential, and not use or permit any unauthorised use of, any Confidential Information without the other Party's prior written consent, except where the disclosure is required by law.
- (f) **Publicity:** With your prior written consent, we may use advertising or publicly announce that you are a user of our Software, including in website testimonials and in our marketing material.
- (g) **Force Majeure:** If we are delayed from performing our obligations due to such a circumstance for a period of at least two months, we may terminate our agreement with you by giving you 10 days' notice in writing.
- (h) **Disputes:** Neither Party may commence court proceedings relating to any dispute arising from, or in connection with, this Agreement without first meeting with a senior representative of the other Party to seek (in good faith) to resolve that dispute (unless that Party is seeking urgent interlocutory relief or the dispute relates to compliance with this provision).
- (i) **Notices:** Any notice given under this Agreement must be in writing and addressed to us at the details set out below or to you at the details provided when setting up your Account. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of

post, or at the time of transmission in the case of email.

(j) **Variation:** We may modify this Agreement from time to time by notifying you by email or a notification to your Account of any material amendments. If these modifications have a material adverse effect on you and accordingly you do not agree to the modifications, you may terminate this Agreement by written notice without Liability to us.

(k) **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions.

(l) **Assignment:** You may not assign, transfer or delegate your rights and obligations under this Agreement without our prior written consent. We may without restriction assign, transfer or delegate our rights and obligations under this Agreement with 30 days prior notice.

(m) **Governing law:** The Agreement is governed by the laws of Victoria. You irrevocably and unconditionally submit to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waive any rights to object to proceedings being brought in those courts. The Software may be accessed in Australia and overseas. We make no representation that the Software complies with the laws (including Intellectual Property laws) of any country outside of Australia, other than the GDPR where applicable. If you download and install the Software from outside Australia, you do so at your own risk and are responsible for complying with the laws in the place you download and install the Software.

(n) This clause will survive termination or expiry of this Agreement.

## 15 Definitions and Interpretation

### (a) Definitions

The following words will mean:

**Agent** means a user permitted to use the Software under your Account;

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Victoria.

**Business Hours** means 9am to 5pm on a Business Day;

**Computing Environment** means your computing environment including all

hardware, software, information technology and telecommunications services, all hardware, software, networks and other IT systems used by you from time to time, including a network;

**Confidential Information** includes confidential information about a Party's business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential" but does not include any information which is in the public domain other than through a breach of confidence. Our Confidential Information includes our Intellectual Property including the Software. Your Confidential Information includes the Data;

**Consequential Loss** includes any indirect, incidental or consequential loss, loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any remote, abnormal or unforeseeable loss, loss of use and/or loss or corruption of data or any loss or damage relating to business interruption, or otherwise, suffered or incurred by a person, arising out of or in connection with this Agreement (whether involving a third party or a Party to this Agreement or otherwise);

**Data** means the information, documents and other data inputted by you, your Personnel or Agents into the Software;

**Force Majeure Event** means an event which is beyond a Party's reasonable control including a fire, storm, flood, earthquake, explosion, accident, act of the public enemy, terrorist act, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, transportation embargo, and strike by employees of a third person;

**Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, customer names or internet domain names. Our Intellectual Property includes the Software;

**Laws** means acts, ordinances, regulations, rules, code and by-laws of the Commonwealth or any state or territory and includes the Privacy Act and the *Spam Act 2003* (Cth);

**Liability** means any loss, liability, cost, payment, damages, debt or expense (including reasonable legal fees);

**Party** means either party to this Agreement;

**Personal Information** has the meaning given in the Privacy Act and where the GDPR applies, it also has the meaning of "personal data" given in the GDPR;

**Personnel** means, in relation to a Party, the officers, employees, contractors, sub-contractors and agents of that Party; and

**Privacy Act** means the *Privacy Act 1988* (Cth).

**For any questions please contact at:**

L&L Holdings Pty Ltd ACN 606 036 659 or  
Lovestock & Leaf APAC Pty Ltd ACN 606  
036 444

**Email:** [contact@lovestockleaf.com](mailto:contact@lovestockleaf.com)

**Last update:** 15 April 2019

© [LegalVision ILP Pty Ltd](#)

## DATA PROCESSING SCHEDULE

The Parties agree this Data Processing Schedule (**Schedule**) forms part of the Lovestock & Leaf Application Licence Agreement (**Agreement**) entered into between you and L&L Holdings Pty Ltd ACN 606 036 659 and/or Lovestock & Leaf APAC Pty Ltd ACN 606 036 444 (**us** and **we** as applicable).

### 1 Definitions

- 1.1** In this Schedule, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:
- (a) Applicable Laws** means (a) European Union or Member State laws with respect to any Company Personal Data in respect to which Company is subject to EU Data Protection Laws; and (b) any other applicable law with respect to any Company Personal Data in respect to which Company is subject to any other Data Protection Laws;
  - (b) Company Personal Data** means any Personal Data Processed by a Contracted Processor on behalf of a Company including any Personal Data of Company customers, employees or contractors (**Users**) pursuant to or in connection with the Agreement or any end user licence agreement between us and Users;
  - (c) Contracted Processor** means us and/or a Subprocessor;
  - (d) Data Protection Laws** means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;
  - (e) EEA** means the European Economic Area;
  - (f) EU Data Protection Laws** means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;
  - (g) GDPR** means EU General Data Protection Regulation 2016/679;
  - (h) Restricted Transfer** means a transfer of Company Personal Data where such transfer would be prohibited by EU Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws) in the absence of the Standard Contractual Clauses or another lawful data transfer mechanism as set out at [6.4.3](#) or [12](#) below.
  - (i) Services** means the services and other activities to be supplied to or carried out for you by us or on behalf of us pursuant to the Agreement;
  - (j) Standard Contractual Clauses** means the contractual clauses set out by the European Commission available at <https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/model-contracts-transfer-personal-data-third-countries> as updated or replaced from time to time;
  - (k) Subprocessor** means any person (including any third party, but excluding your employees of our sub-contractors) appointed by or on behalf us to Process Personal Data on behalf of you; and
  - (l) You** means the entity that accepts/accepted the Agreement.
- 1.2** The terms, **Commission, Controller, Data Subject, Member State, Personal Data, Personal Data Breach, Processing** and **Supervisory Authority** shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.
- 1.3** The word **include** shall be construed to mean include without limitation, and cognate terms shall be construed accordingly.
- ### 2 Processing of Company Personal Data
- 2.1 Role of Parties:** The Parties acknowledge that for the purposes of this Schedule, we act as a processor and you are the controller in relation to Company Personal Data.
- 2.2** The Parties will comply with all applicable Data Protection Laws in the Processing of Company Personal Data.
- 2.3** We will only Process Company Personal Data on behalf of and in accordance with your relevant instructions and while carrying out our obligations under the Agreement, unless other processing is required by Applicable Laws to which the relevant Contracted Processor is subject.
- 2.4** Annex 1 to this Schedule sets out the following details:
- (a)** description of the types of Processing we will carry out and the types of Company Personal Data you will Process under this Agreement;



- (b) the types of Data Subjects your Company Personal Data relates to; and
- (c) you agree to update us (as soon as practicable) if the details in Annex 1 are incorrect or change.

### 3 Subprocessing

- 3.1 You authorise us to continue to use those Subprocessors already engaged by us as at the date of this Schedule, subject to our obligations at 3.3.
- 3.2 We shall give you prior written notice of the appointment of any new Subprocessor, including full details of the Processing to be undertaken by the Subprocessor. If, within 10 days of receipt of that notice:
  - (a) you have not notified us in writing of any objections (on reasonable grounds) to the proposed appointment of that Subprocessor we will assume that you have consented to the appointment of that Subprocessor; or
  - (b) if you notify us in writing of any objections (on reasonable grounds) to the proposed appointment we shall not appoint (or disclose any Company Personal Data to) that proposed Subprocessor until reasonable steps have been taken to address the objections you raised and you have been informed of these reasonable steps.
- 3.3 With respect to each Subprocessor we shall:
  - (a) before the Subprocessor first Processes Company Personal Data (or, where relevant, in accordance with clause 3.2), carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Company Personal Data required by the Agreement;
  - (b) ensure that the arrangement between on the one hand (a) us or (b) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, is governed by a written contract including terms which offer at least the same level of protection for Company Personal Data as those set out in this Schedule and meet the requirements of Article 28(3) of the GDPR.

### 4 Data Subject Rights

- 4.1 We shall:
  - (a) promptly notify you if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Company Personal Data; and
  - (b) ensure that the Contracted Processor does not respond to that request except on your documented instructions, or as required by Applicable Laws to which the Contracted Processor is subject, in which case we shall to the extent permitted by Applicable Laws inform you of that legal requirement before the Contracted Processor responds to the request;
  - (c) implement appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of your obligations under the Data Protection Laws; and
  - (d) where you require our assistance to respond to a request we will use commercially reasonable efforts to assist you and to the extent legally permitted, you shall be responsible for the costs arising from our assistance.

### 5 Security

- 5.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, we will implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.
- 5.2 In assessing the appropriate level of security we shall take into account the risks that are presented by Processing, in particular from a Personal Data Breach.
- 5.3 **Personal Data Breach:** We shall notify you without undue delay if we become aware of a Personal Data Breach and on your reasonable request take such reasonable commercial steps as are directed by you to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

### 6 Data Protection Impact Assessment and Prior Consultation

- 6.1 Upon your request and to the extent required by the GDPR we shall provide reasonable assistance to you where you are fulfilling your obligations under the GDPR by carrying out a data protection impact assessment where:
  - (a) the assessment relates to the Processing of Company Personal Data; and
  - (b) you reasonably require our assistance with prior consultations with Supervising Authorities or other competent data privacy authorities.

## 7 Restricted Transfers

- 7.1** Subject to clause 7.3, you (as **data exporter**) and each Contracted Processor, as appropriate, (as **data importer**) hereby enter into the Standard Contractual Clauses in respect of any Restricted Transfer from you to that Contracted Processor. The [Standard Contractual Clauses are available here](#).
- 7.2** The Standard Contractual Clauses shall come into effect under clause 7.1 on the commencement of the relevant Restricted Transfer.
- 7.3** Clause 7.1 shall not apply to a Restricted Transfer unless its effect, together with other reasonably practicable compliance steps (which, for the avoidance of doubt, do not include obtaining consents from Data Subjects), is to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Law.

## 8 Audit

- 8.1** Subject to reasonable notice (not less than 14 days) and your reasonable request to demonstrate compliance with this Schedule we shall (subject to obligations of confidentiality):
- (a)** make available all information necessary; and
  - (b)** shall allow you or an independent auditor appointed by you to carry out audits, including inspections, in relation to the Processing of Company Personal Data by the Contracted Processors.

## 9 Deletion or return of Company Personal Data

- 9.1** Upon termination or expiry of this Schedule, we shall destroy or return to you all Company Personal Data in our possession or control unless any Applicable Laws require that we retain Company Personal Data.

## 10 General Terms

- 10.1 Order of Precedence:** In the event of any conflict or inconsistency between the agreements entered into between the Parties the Standard Contractual Clauses shall prevail, then the Schedule, followed by the Agreement.
- 10.2 Obligations under the Agreement:** Subject to clause 10.1, nothing in this Schedule reduces the Parties' obligations under the Agreement and all clauses in the Agreement will continue to apply unless they conflict with the Applicable Laws, including but not limited to: governing law and jurisdiction, dispute resolution, limitation of liability.
- 10.3 Legal effect:** This Schedule is entered into and becomes a binding part of the Agreement with Effective Date either (i) the date you accept online the Agreement and this Schedule which forms part of the Agreement.

## Annex 1 details of processing of company personal data

This Annex 1 includes certain details of the Processing of Company Personal Data as required by Article 28(3) GDPR.

1. *Subject matter and duration of the Processing of Company Personal Data*
  - The subject matter and duration of the Processing of Company Personal Data are set out in the Agreement and this Schedule.
2. *The nature and purpose of the Processing of Company Personal Data*
  - The nature and purpose of the Processing of Company Personal Data is further specified in the Agreement and as further instructed by you.
3. *The types of Company Personal Data to be Processed*
  - The types of Company Personal Data to be Processed may include but is not limited to the following:
    - i. a Data Subject's name;
    - ii. a Data Subject's contact details, including email address, mailing address, street address and/or telephone number;
    - iii. a subset of the Data Subject's personal information shared with related third party applications where the Data Subject gives us permission to access this information;
    - iv. a Data Subject's credit card or payment details (through our third party payment processor);
    - v. a Data Subject's preferences and/or opinions which are voluntarily provided to us;
    - vi. a Data Subject's information voluntarily provided to us as part of market research or through customer surveys;
    - vii. details of products and services we have provided to a Data Subject and/or that the Data Subject has enquired about, and our response to that Data Subject;
    - viii. a Data Subject's browser session and geo-location data, device and network information, statistics on page views and sessions, acquisition sources, search queries and/or browsing behaviour;
    - ix. information about a Data Subject's access and use of our Site, including through the use of Internet cookies, a Data Subject's communications with our Site, the type of browser a Data Subject is using, the type of operating system a Data Subject is using and the domain name of a Data Subject's Internet service provider;
    - x. additional personal information that a Data Subject provides to us, directly or indirectly, through the Data Subject's use of our Site, associated applications, associated social media platforms and/or accounts from which the Data Subject permits us to collect information; and
    - xi. any other personal information requested by us and/or provided by a Data Subject or a third party.
4. *The categories of Data Subject to whom Company Personal Data relates*
  - The categories of Data Subject to whom Company Personal Data relates are as follows:
    - i. The Company's contact person/s who we communicate with;

- ii. The Company's account holder for the Zendesk account used to purchase an application from us;
- iii. Employees or contractors of the Company who use our application and actively contact us (including a support request); and
- iv. Customers of the Company (where we are provided access to carry out a support request).

5. *Your obligations and rights*

- Your obligations and rights are set out in the Agreement and this Schedule.

### Appendix 1 to the Standard Contractual Clauses

This Appendix forms part of the Clauses.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

#### Data subjects

The personal data transferred concern the following categories of data subjects:

- as specified in the Agreement and Schedule.

#### Categories of data

The personal data transferred concern the following categories of data:

- as specified in the Agreement and Schedule.

#### Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data:

- as specified in the Agreement and Schedule.

#### Processing operations

The personal data transferred will be subject to the following basic processing activities:

- activities reasonably required for the provision of the services or authorised by you.

Appendix 2 to the Standard Contractual Clauses

**Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):**

We take technical and organisation security measures to protect the Company Personal Data which we Process.

Details of these technical and organisational security measures can be found here:  
<https://www.lovestockleaf.com/security/security-policy.html>