LOVESTOCK & LEAF APPLICATION LICENCE AGREEMENT

FREE TRIAL

Your Licence to download, install and use the App will begin with a **14 day free trial**. The trial is **free** and designed to allow you to evaluate our App and make sure it is right for you. The free trial begins on the date that you enter your payment details, accept this Agreement and click the "Start Trial" button and ends 14 days later.

We will send **1 reminder** to the email address registered to your Zendesk Marketplace account at least 7 days before the end of the free trial.

If you do not cancel the free trial, **15 days after the free trial commences you will be billed the Fee** as set out on the Site or Zendesk Marketplace at the time that you signed up. After your free trial, you must pay the Fee in advance every month on the calendar day corresponding to the date your free trial ended.

To cancel the free trial or your paid Licence you may use the cancellation functionality within the App settings or email us requesting to cancel your free trial.

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 (**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 date on which you accept this Agreement (**Effective Date**) 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**), you may request that the additional terms in our Data Processing Schedule (**DPS**), apply and form part of this Agreement.

(f) You accept this Agreement by clicking a box indicating your 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. 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, install and use one instance of the Software (being one Account) for the Licence Period (**Licence**).

(b) Each **Licence Period** is one month.

3. Download, Installation and Accounts

(a) Upon the purchase of the Software, 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.

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.

(c) While we may disclose your Company Personal Data for the purposes set out in this Agreement and in accordance with the terms of this Agreement, we will not "sell" your Company Personal Data as defined in the California Consumer Privacy Act.

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 is reasonably required by us 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. Free Trial

(a) The terms in the box at the top of this Agreement apply to any free trial we offer to you.

(b) We have the right to terminate any free trial if you are found to be misusing the Software.

10. Payment

(a) You must pay us the Fee for your Licence and any other amount payable to us under this Agreement, in advance in advance on the calendar corresponding to the date your free trial ended (**Payment Date**), 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.

(b) In some cases, your Payment Date may change, for example, if payment is unable to be processed or if your Licence began on a day not contained in a given month.

(c) 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 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.

(d) Each Licence Period will automatically extend for a Licence Period of the same length, unless you terminate your Account in accordance with clause 13.

(e) 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.

(f) 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.

(g) All Fees are stated in US 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.

(h) 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 13.

11. 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.

12. Liability

(a) Despite anything to the contrary but subject to your Statutory Rights, 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) neither Party will be liable 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 11 (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.

13. Cancellation and Termination

(a) You may cancel your Account and terminate this Agreement by providing us notice via your Account settings or by emailing our support staff and the Licence will terminate at the end of the current Licence Period. No refunds will be given upon termination in accordance with this clause.

(b) We may terminate this Agreement at the end of any Licence Period by providing you 10 days' advance notice.

(c) 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.

(d) On termination of this Agreement:

(1) we will disable the Software;

(2) you agree that, to the extent permitted by law, 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:** We will not be liable for any delay in performing our obligations due to a Force Majeure Event.

(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, Australia. 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:

Agreement means this Application Licence Agreement and all schedules (including, if requested, the DPS), annexures and attachments included, or referred to, in this Application Licence Agreement;

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, pandemic, government shutdown, 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

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