

Terms of Service

Welcome to Lucky Orange!

Lucky Orange, LLC ("**Lucky Orange**", "**we**", or "**us**") makes the Lucky Orange website and its proprietary Service available for your use subject to the terms and conditions herein and any additional terms contained in an amendment or addendum (collectively, this "**Agreement**"). This Agreement is between Lucky Orange and the entity that accepts this Agreement by physical or electronic signature ("**Customer**" or "**you**") and is effective as of the date of acceptance ("**Effective Date**"). If you are an individual accepting this Agreement on behalf of your employer, you agree that your acceptance hereby binds your employer to this Agreement in the same manner as if this Agreement was executed by your employer in its corporate capacity.

The disclaimers, terms, and conditions in this Agreement are of general application and may be supplemented by additional policies and procedures of specific application that Lucky Orange may disclose from time-to-time. Customer agrees that the Data Processing Agreement which is hereby incorporated into this Agreement as Exhibit A forms an integral part of this Agreement and that customer has read and agrees to be bound by its terms to the extent Customer transmits Personal Data to Lucky Orange.

1. DEFINITIONS

The terms in this Section 1 shall have the meanings under this Agreement as described below:

- 1.1 "**Authorized User**" means an individual who is authorized by you to access and use the Service within your organization. Authorized Users may include, for example, your employees, consultants, and contractors.
- 1.2 "**Customer Data**" means, collectively, all data that is: (1) provided by you directly to Lucky Orange (including Confidential Information); (2) processed by Lucky Orange in connection with your Authorized User's use and administration of the Service, and (3) processed by Lucky Orange in connection with a Visitor's interaction with your web properties on which the Service is deployed.
- 1.3 "**Documentation**" means any documentation made available by Lucky Orange pertaining to the Service including, as applicable, any accompanying or online user guides or technical information relating to the Service, in each case, as may be updated or amended by or on behalf of Lucky Orange from time to time. The Documentation for the Service is available here: <https://help.luckyorange.com/>
- 1.4 "**Fees**" means all fees, charges, and other amounts set forth in the Order for the Service.
- 1.5 "**Order**" means an order for Services executed by the parties. Each Order, once executed, shall be incorporated into this Agreement. In the event of a conflict between terms, the terms of this Agreement shall govern unless the Order specifically references a particular section name and number within this Agreement with the express intent to modify the terms therein.
- 1.6 "**Service**" or "**Services**" means the proprietary software, products, services and any updates that Lucky Orange provides to Customer pursuant to the terms of this Agreement and any Orders.
- 1.7 "**Term**" shall have the meaning set forth in Section 6.1.
- 1.8 "**Visitor**" means any person that interacts with a web property upon which you have deployed the Service.

2. OUR SERVICE

- 2.1 **Grant of Access.** On the condition you pay all Fees and otherwise comply with your obligations under this Agreement, and subject further to additional terms of Third Party Products made available to you in connection with the Service, Lucky Orange hereby grants to you a limited, revocable, non-exclusive, non-transferable (except as provided in Section 12.11), right to access and use the Services set forth under one or more Orders and related Documentation solely in connection with your personal or internal business purposes. You may procure additional Services during the Term by entering additional Orders with Lucky Orange. Other than as expressly granted in this Agreement, no other rights or licenses to Lucky Orange Materials (defined below) are granted. If you do not comply with the terms of this Agreement, Lucky Orange reserves the right to revoke, suspend, or limit your right to access to the Service. Any use of the Service that exceeds the rights expressly granted in this Agreement is strictly prohibited and constitutes a violation of this Agreement, which may result in the suspension or termination of your right to access and use the Service.
- 2.2 **Modification.** You agree that Lucky Orange has the right to change, modify, add to, or discontinue any aspect or feature of the Service at any time without any obligation to give you advance notice of any changes; provided, however, Lucky Orange will use commercially reasonable efforts to ensure it does not materially degrade or diminish the features or functionality of the Service. From time to time, Lucky Orange may release upgrades, fixes, or new versions of the Service, although these upgrades may not be consistent across all platforms and devices.
- 2.3 **Removal of Access.** Lucky Orange reserves the right to reasonably suspend or refuse access to the Service for any Authorized User in the event that: (1) you or your Authorized User breach or violate this Agreement or other incorporated agreements or guidelines; (2) Lucky Orange discontinues the Service; (3) there is a technical or security issue or problem that requires temporary suspension; or (4) you or your Authorized User engage in fraudulent or illegal activities or a material breach of your obligations under

the terms of this Agreement. You further agree that such measures may be taken in Lucky Orange's sole but reasonable discretion and without any liability to you or any third party.

- 2.4 **Defects and Availability.** Lucky Orange uses commercially reasonable efforts to maintain the Service; however, Lucky Orange is not responsible for any unanticipated defects or failures associated with the Service or any damages to you (either direct or indirect) that may result from any such defects or failures. Lucky Orange is not obligated to provide you support for, and shall not be responsible or liable for, any errors in the Service or any damages resulting from your failure to properly implement the Service on your web properties in accordance with the Documentation. The Service may be inaccessible or inoperable for any reason including, without limitation: (1) equipment malfunctions; (2) periodic maintenance procedures or repairs which may be undertaken from time-to-time by Lucky Orange or its third-party service providers; or (3) any other causes beyond Lucky Orange's reasonable control. You further understand that the Service is provided over the Internet and hosted by a third-party provider, so the quality and availability of the Service may be affected by factors outside of Lucky Orange's control. The Service is not intended to be available 100% of the time and Lucky Orange does not make any guarantees regarding the reliability or availability of the Service and will not be liable to you or any third party for damages or losses related to the Service being unavailable.
- 2.5 **Free Trial.** When you register for the Service, Lucky Orange may provide you a limited, revocable, non-exclusive, non-transferable right to use the Service for a limited time for free ("**Free Trial Period**"). The term for the Free Trial Period will begin on the date of your registration for the Service and will continue for a period of seven (7) days, unless extended by Lucky Orange in its sole discretion or sooner terminated in accordance with the termination or suspension rights set forth in this Agreement. Upon completion of the Free Trial Period, you will be presented with the option to terminate your access to the Service or convert to one of the paid Service plans by providing payment information in addition to the information you provided to Lucky Orange upon registration.
- 2.6 **Third-Party Products.** The Service may permit access to Third-Party Products. "**Third-Party Products**" means any products, content, services, information, websites, or other materials that are owned by third parties and are incorporated into or accessible through the Services. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions presented to you for acceptance within the Service by website link or otherwise. If you do not agree to abide by the applicable terms for any such Third-Party Products, then you should not install, access, or use such Third-Party Products. You further acknowledge and agree that Lucky Orange will not be responsible or liable, directly, or indirectly, and you hold Lucky Orange harmless for any damage or loss caused by your use of or reliance upon any such Third-Party Products.
- 2.7 **Ownership of Intellectual Property.** As between you and Lucky Orange, all images, trademarks, service marks, logos and icons displayed on the Service, or the Lucky Orange website are the property of Lucky Orange. All Lucky Orange patents, copyrights, moral rights, trade secrets, trademarks, service marks, publicity rights, and other proprietary rights (collectively, "**Intellectual Property Rights**") and all systems, databases, information, data, documents, materials, and works which provided, used, or made available in connection with the Service (collectively, the "**Lucky Orange Materials**") shall be and remain at all times the property of Lucky Orange and its third-party licensors. You are not acquiring any Intellectual Property Rights in or to the Lucky Orange Materials other than a non-exclusive right to access and use the Service solely in accordance with the terms of this Agreement. The Lucky Orange Materials may not be reproduced, recreated, sublicensed, modified, accessed, or used in any manner or disseminated or distributed to any other party in violation of this Agreement.
3. **CUSTOMER RESPONSIBILITIES**
- 3.1 **Account Registration.** When accessing the Service for the first time, you will be required to provide certain requested information during a registration process. Once Lucky Orange receives such information, you will be provided with an account and login information, including a username and password. As the account owner, you and your Authorized Users (who have been authorized by you to use the Service) are the only persons authorized to access and use your account. You and your Authorized Users are responsible for maintaining the confidentiality of your username and password and you are fully responsible for all activities that occur under your username and password by all Authorized Users. You agree that you will provide truthful and accurate information during the registration process. Lucky Orange may refuse to grant you a particular username for any reason, including, without limitation, if Lucky Orange has reason to believe that such username impersonates someone else, is protected by trademark or other proprietary rights, or is vulgar or otherwise offensive.
- 3.2 **Unauthorized Use and Information Changes.** You must immediately notify Lucky Orange if your registration information changes, or you learn of or have reason to suspect any unauthorized use of your account or any other breach of security. You are responsible for any damages to Lucky Orange or the Service resulting from unauthorized access to the Service from your account and Lucky Orange will have no liability to you or any third party for damages or loss related to such unauthorized access or use.
- 3.3 **Representations.** You hereby represent and warrant that: (1) you have the legal capacity and authority to enter into and perform your obligations under this Agreement; (2) you will comply with the terms and conditions of this Agreement and any other agreement to which you are subject that is related to your use of the Service or any part thereof; (3) you have provided and will maintain accurate and complete information, including, without limitation, your legal name, email address, and any other information Lucky Orange

may reasonably require; and (4) your access to and use of the Service or any part thereof will not constitute a breach or violation of any other agreement, contract, terms of use or any law or regulation to which you are subject.

- 3.4 **Restrictions.** You may not: (1) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party any portion of our Service in any way; (2) copy (except as required to place the Lucky Orange JavaScripts on your website), modify, adapt, alter, translate, create derivative works, reverse engineer, decompile, disassemble, or otherwise attempt to learn the source code, communications protocol, structure, or ideas upon which the Service is based; (3) use the Service or any data, content, or information accessed through the Service to develop a competing service or product; (4) use any device, software, or routine intended to damage or otherwise interfere with the proper functioning of the Service, servers, data centers, or networks connected to the Service or take any other action that interferes with any other person's use of the Service; (5) decrypt, transfer, create Internet links to the Service, or "frame" or "mirror" the Service on any other server or wireless or Internet-based device; (6) use or merge the Service or any component thereof with other software, databases, or services not provided or approved by Lucky Orange; (7) circumvent or attempt to circumvent any electronic protection measures in place to regulate or control access to the Service, or remove, obscure, or alter any notices or indications of any Intellectual Property Rights, any trade names, trademarks, service marks, logos, trade dress, and any other distinctive or proprietary symbols, labels, designs, or designations, or any electronic notices; (8) use the Service for any fraudulent or otherwise unlawful purposes or in violation of this Agreement; (9) develop, distribute, or sell any software or other functionality capable of launching, being launched from, or otherwise integrated with the Service; (10) use any bot, spider, or other automatic or manual device or process for the purpose of harvesting or compiling information on the Service for any reason; (11) access or attempt to access any other Authorized User's account or use the Service in a way that prevents or inhibits another Authorized User from enjoying the Service; (12) use any data, content, or information made available through the Service in any manner that misappropriates any trade secret or infringes any copyright, trademark, patent, rights of publicity, or other proprietary right of any party; (13) introduce into the Service any virus, rogue program, Trojan horse, worm or other malicious or intentionally destructive code, software routines, or equipment components designed to permit unauthorized access to or disable, erase, or otherwise harm the Service, or perform any such actions; (14) introduce into the Service any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of an unauthorized person; (15) delete, modify, hack, or attempt to change or alter the Service, any data, content, or information made available through the Service, or any notices on the Service; (16) connect to or access any Lucky Orange computer system or network other than the Service; (17) impersonate any other person or entity to use or gain access to the Service; or (18) conduct or otherwise participate in any distributed denial-of-service attack or similar malicious attack intended or designed to artificially delay, disrupt or otherwise adversely affect the Service or any other Authorized User's access to or use of the Service. Lucky Orange reserves the right to fully investigate and prosecute violations of any of the above. Lucky Orange may involve and cooperate with law enforcement authorities in prosecuting Authorized Users who violate this Agreement.

4. DATA RIGHTS, USES, AND LIMITATIONS

- 4.1 **Customer Data.** As between Lucky Orange and you, you will at all times retain ownership of Customer Data. You hereby grant to Lucky Orange a nonexclusive, worldwide, royalty-free, fully paid, transferable license to host, cache, record, copy, view, and display Customer Data for the purpose of providing the Service to you and for internal use by Lucky Orange (such as for the billing, activation, provision, maintenance, upgrades, updates, deactivation and/or use of the Service and/or related products and/or services). You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and right to use such Customer Data. Lucky Orange does not guarantee the security or availability of Customer Data and is not responsible for any loss of damage to Customer Data. You acknowledge and agree that you bear sole responsibility for adequately controlling, processing, storing, and backing up Customer Data. Lucky Orange reserves the right, but not the obligation, to refuse to post or to remove any information or materials, in whole or in part, that Lucky Orange believes to be unacceptable, undesirable, or in violation of this Agreement or the rights of third parties.
- 4.2 **Customer Data Representations.** You represent, warrant, and covenant that you will not publish, post, upload, record, or otherwise distribute or transmit any Customer Data or other material that: (1) infringes or would infringe any copyright, patent, trademark, trade secret or other Intellectual Property Rights or proprietary right of any party, or any rights of publicity or privacy of any party; (2) violates any law, statute, ordinance, or regulation; (3) is inappropriate, profane, defamatory, libelous, obscene, indecent, threatening, harassing, or otherwise unlawful; (4) is harmful to minors or otherwise pornographic; (5) is materially false, misleading, or inaccurate; and/or (6) contains information for which you not have the right to permit Lucky Orange to access and process any Customer Data. You further represent and warrant that you have acquired all legally required consents, releases, and authorizations (freely given and fully informed) from all data subjects (Visitors and Users) necessary to provide Customer Data to Lucky Orange. For clarity, and without limiting the generality of the foregoing, you are solely responsible for ensuring you have received and properly documented in each case all consents, authorizations, and releases required under applicable law for each Visitor and User that may interact with the tracking, monitoring, session replay, chat, or other data collecting features of the Service. You will indemnify, defend, and hold Lucky Orange harmless from and against any and all claims, allegation, investigations, administrative actions, private rights of action, and all damages, fines, fees, losses, penalties, and costs (including reasonable attorney and special witness fees) arising from or related to a claimed breach of state or federal data privacy or wiretapping laws caused by your failure to gain consent from each

Visitor and User for the use, monitoring of, or interaction with Lucky Orange's Service for each web property that has the Service deployed (now or in the past). The foregoing indemnification shall survive termination or expiration of this Agreement.

- 4.3 **Privacy.** You are responsible for compliance with all privacy laws and regulations applicable to your use and the use by your Visitors and Users of the Service, including providing any required privacy notice(s) or consent pop-up banners. By using the Service, you are responsible for providing your Authorized Users and Visitors with information on how to opt out of tracking by the Service (e.g., providing a link to the opt-out mechanism provided by Lucky Orange). You are not to transmit, or allow transmission of, Customer Data that contains Sensitive Data to Lucky Orange (via the Service or otherwise). As used herein, "**Sensitive Data**" includes payment card data or other financial account information, driver's license numbers, birthdates, social security numbers, government-issued identifiers, passwords or other log-in credentials, racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data, data concerning health, and data concerning a natural person's sex life or sexual orientation or similarly sensitive information. In an effort to assist you in preventing the transmission of Sensitive Data, Lucky Orange makes available tools outlined in the Privacy Statement located here: <https://a.storyblok.com/f/110013/x/6355fd3962/lucky-orange-privacy-statement-updated-01-19-22-69623277v6-c.pdf>, and the help Documentation. For example, Lucky Orange's system natively employs keystroke masking techniques for text entered into text fields or input boxes prior to transmission to the servers. If, however, you enable keystroke logging, it is your responsibility to ensure that you do not enable keystroke logging on fields that may contain Sensitive Data and you ensure you gain informed consent from each Visitor and User for each session where key stroke data is captured. Without limitation, you agree to indemnify, defend, and hold Lucky Orange harmless from and against any third-party claims that arise from or are related to your transmission of Sensitive Data to Lucky Orange in connection with your use of the Service.
- 4.4 **Usage Data and Aggregated Statistics.** Lucky Orange may generate de-identified data, statistics, and other performance or usage-related information ("**Usage Data**") in the course of providing the Service to you. You acknowledge and agree that, as between you and Lucky Orange, all Usage Data is and shall be and remain the property of Lucky Orange. Lucky Orange may use, aggregate, and share Usage Data for the purposes of providing the Service, conducting research, preparing industry benchmarking reports, product development, and other commercial uses subject to applicable law. Lucky Orange will ensure that Customer, its Authorized Users, and its Visitors cannot be identified through the Usage Data or any derivative thereof. You further acknowledge and agree that Lucky Orange may compile Usage Data based on Customer Data input into the Services provided such Usage Statistics do not identify you, your Visitors, or your Users.
- 4.5 **Feedback.** Lucky Orange welcomes comments, feedback, information, or materials regarding the Service or any of the other Lucky Orange products or services (collectively, "**Feedback**"). By submitting Feedback to Lucky Orange, you agree to assign, and hereby irrevocably assign to Lucky Orange, all right, title, and interest, on a worldwide basis, in and to the Feedback and all copyrights, moral rights, and other Intellectual Property Rights embodied in such. Lucky Orange will be free to use, copy, distribute, publish, and modify the Feedback on an unrestricted basis, without compensation to you.
5. **FEES AND PAYMENT**
- 5.1 **Payment Terms.** You agree to pay to Lucky Orange all applicable Fees due for the Service in accordance with terms of this Agreement and the Order, with any applicable Taxes required. Except as otherwise specified herein or in an Order, Fees are based on the Service purchased and not actual usage and all payment obligations under this Agreement are non-cancelable and non-refundable. Any payments more than thirty (30) days past due will bear a late payment fee of 1.5% interest per month or the highest amount permitted by law, whichever is less. You agree to be responsible for payment for all activity by Users who access or use the Service through your account. You are responsible for your own costs and expenses related to using the Service such as charges for Internet access, third party software licenses, or other data transmission fees.
- 5.2 **Taxes.** Service fees are exclusive of all invoice and bank processing fees, taxes, levies, or duties imposed by taxing authorities, and you are responsible for payment of all such fees, taxes, levies, or duties, excluding only United States income (federal or state) taxes imposed on Lucky Orange, including by way of example and not limitation, import duties and fees, sales, use, transfer, excise, value-added, and gross receipts ("**Taxes**") In the event you are required to withhold any portion of service fees due to payments to banks or taxing authorities, (1) you agree to do so and to indemnify Lucky Orange for any liability resulting from your failure to make such withholdings, and (2) Lucky Orange reserves the right to adjust the pricing of the Service so that you are responsible for payment to Lucky Orange of the full amount for the Service, net of any such withholdings, so that the net amounts received by Lucky Orange after such withholdings is equal to what was invoiced.
- 5.3 **Payment method; Credit Card Authorization.** Until all amounts due have been paid in full, you agree to always keep your payment information current and authorize Lucky Orange to charge such payment method (including but not limited to credit card, debit card, wire transfer and/or automated clearing house) provided by you, all amounts due under this Agreement, including without limitation, usage beyond the amount specified in the applicable Order.
- 5.4 **Invoicing.** Except regarding the Free Trial Period, Lucky Orange bills customers in advance monthly or once a year for recurring annual plans. All amounts due shall be paid in US dollars. Lucky Orange may invoice you electronically or by paper invoice. You

must notify Lucky Orange within thirty (30) days of the receipt of the invoice of any billing errors thereon. If you do not notify Lucky Orange within this time, Lucky Orange will not be required to correct the error and/or adjust your account and you hereby waive any claim, allegation, or contention with respect to such invoice. Lucky Orange will not issue refunds for Fees paid for your Service account, even for periods of inactivity.

5.5 **Rate Change.** Lucky Orange reserves the right to change the price of the Service upon notice to you. Such notice may be provided at any time by posting the changes to our website, to your account, or via email. Lucky Orange will not be liable to you or to any third party for any modifications, price changes, or suspension or discontinuation of the Service.

5.6 **Early Termination Fee.** For monthly contracts, there is no early termination fee or refunds. For annual contracts billed monthly, you agree to pay three (3) times the monthly cost specified in such annual contracts in the event you terminate this Agreement prior to the expiration or termination of the specified Term.

6. TERM AND TERMINATION

6.1 **Term.** You will be bound for the entire Term of this Agreement. “**Term**” is defined as the period beginning on the Effective Date and continuing until terminated in writing by either party or when terminated in accordance with [Section 6.2](#) below. Except as otherwise specified in any Order, at the end of any Term, subscriptions will automatically renew for additional Terms equal to the expiring Term length, unless either party gives the other party notice of non-renewal at least thirty (30) days before the end of the applicable Term.

6.2 **Termination of Services.** Either party may terminate this Agreement at any time, in whole or in part, for any reason, provided that if you terminate, you shall be obligated to pay any Fees accrued prior to the date of termination. You may terminate this Agreement by accessing your Account Settings in your dashboard of the Service and selecting to cancel your account (using the instructions provided). In the event of an additional service plan, you will need to provide written notice of termination, sent to support@luckyorange.com. Upon termination of this Agreement, all rights and Services provided by Lucky Orange to you in this Agreement shall cease immediately. Termination of this Agreement shall not limit Lucky Orange from pursuing remedies available to Lucky Orange, including but not limited to injunctive relief, for a failure to pay outstanding Fees or in connection with any other breach of this Agreement. Lucky Orange may also permanently or temporarily terminate, suspend, or otherwise refuse to permit your use of the Service upon reasonable prior written notice without incurring liability as a result thereof, if in our sole determination, you violate, or are reasonably likely to violate, this Agreement, including without limitation, by your nonpayment of Fees. You must remove all Lucky Orange scripts and materials from your website within thirty (30) days of termination.

7. CONFIDENTIAL INFORMATION; MUTUAL NON-DISCLOSURE

7.1 Each party to this Agreement may furnish the other party with certain non-public, proprietary information (the “**Confidential Information**”). For the purposes of this Agreement, Confidential Information is defined as:

1. Disclosed information that is marked or identified as “confidential” at the time of disclosure, or which constitutes the trade secrets of a party under the governing law of this Agreement.
2. The source code and object code of the Service, the pricing structure for the Service and Service provided to you, and any other proprietary information owned by Lucky Orange, and which is provided or disclosed to you at any time.
3. Disclosed information relating to any unreleased products or service offerings
4. The terms and conditions of this Agreement; and
5. The Service.

7.2 Confidential Information shall not include information that:

1. is or becomes part of the public domain or is generally publicly known through no improper action by the receiving party subsequent to the time of the disclosing party’s communication thereof to the receiving party;
2. was rightfully in the receiving party’s possession or known by the receiving party prior to receipt from the disclosing party;
3. is rightfully disclosed without restriction to the receiving party by a third party without violation of any confidentiality covenant by such third party;
4. is independently developed by the receiving party without use of the Confidential Information of the disclosing party; or
5. its disclosure is required by court, regulation or government order and the disclosing party has been given notice of such order and the receiving party reasonably cooperates with the disclosing party in limiting such disclosure to the minimum required, unless a court has ordered that the disclosing party not be given notice.

7.3 Each party agrees to hold the other party’s Confidential Information in confidence and not to use it for any purpose other than the purposes permitted under this Agreement. Each party agrees to use the same standard of care to protect Confidential Information as it uses to protect its own similar confidential and proprietary information, but not less than a reasonable standard of care.

Confidential Information of the other party may only be disclosed to those affiliates, employees, contractors, and advisors of you or of Lucky Orange, as applicable, on a need-to-know basis and who agree to be bound by confidentiality restrictions at least as restrictive as those contained in this Agreement. Confidential Information remains at all times the property of the disclosing party. Unless otherwise explicitly set forth herein, no licenses or rights under any patent, copyright, trademark, or trade secret are granted or are to be implied with respect to Confidential Information.

8. NO WARRANTY; DISCLAIMER

8.1 LUCKY ORANGE MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NON-INFRINGEMENT. THE SERVICE IS PROVIDED BY LUCKY ORANGE AND ITS LICENSORS "AS IS" AND "AS AVAILABLE." YOU ASSUME ALL RISK FOR YOUR USE OF THE SERVICE, INCLUDING WITHOUT LIMITATION ANY HARM CAUSED BY VIRUSES, WORKS, OR OTHER DAMAGING MATERIALS. IN NO EVENT DOES LUCKY ORANGE GUARANTEE ANY RESULTS, INCREASED TRAFFIC OR USER ENGAGEMENT FOR YOU. LUCKY ORANGE DOES NOT WARRANT THAT THE SERVICE OR ANY PORTION THEREOF, IS ACCURATE, ERROR OR BUG FREE, THAT YOUR USE OF THE SERVICE WILL BE UNINTERRUPTED, OR THAT THE SERVICE'S OPERATION WILL NOT NEGATIVELY AFFECT OTHER SOFTWARE OR HARDWARE. THIS SECTION 8.1 APPLIES TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW. THE SERVICE IS OFFERED BY LUCKY ORANGE FROM ITS FACILITIES IN THE UNITED STATES OF AMERICA. LUCKY ORANGE MAKES NO REPRESENTATIONS THAT THE SERVICE IS APPROPRIATE OR AVAILABLE FOR USE IN OTHER COUNTRIES. THOSE WHO ACCESS OR USE THE SERVICE FROM OTHER JURISDICTIONS DO SO AT THEIR OWN RISK AND ARE RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE LAWS, INCLUDING BUT NOT LIMITED LAWS RELATED TO THE COLLECTION OF DATA FROM YOUR WEBSITE'S VISITORS AND USERS.

9. INDEMNIFICATION

9.1 **Lucky Orange Indemnification.** Lucky Orange shall defend you against any third-party claims that the Service infringes any United States patent, trademark, or copyright, and pay any costs and damages finally awarded by a court of competent jurisdiction or agreed upon in settlement with respect to such claims, provided Lucky Orange is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and sole control over defense and settlement. Lucky Orange will not be responsible for any settlement it does not preapprove in writing. The foregoing obligations do not apply with respect to the Service or portions or components thereof which are: (1) not supplied by Lucky Orange, (2) modified after delivery by Lucky Orange, or (3) combined with other products, processes or materials where the alleged infringement relates to such combination. Additionally, Lucky Orange shall have no obligation to indemnify you under this Section 9.1 where you continue any allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or where your use of the Service is not strictly in accordance with this Agreement or with the Documentation.

9.2 **Your Indemnification.** You agree to defend, indemnify, and hold harmless each of Lucky Orange, its affiliates and respective officers, employees, consultants, shareholders and representative from and against any and all claims, liabilities, damages, and/or costs (including attorneys' and expert witness fees, costs and other expenses) arising out of or related to any actual or alleged claims involving or resulting from: (1) violation of this Agreement or applicable law, rule or regulation by you or any person accessing or using the Service by or through you; (2) infringement or misappropriation by you, or any person accessing or using the Service by or through you, of any intellectual property or privacy or other right of any person or entity (except claims of infringement or misappropriation arising solely from use of the Service as provided under this Agreement); (3) your Authorized Users or Visitors, or arising out of or relating to your relationship with any of your Authorized Users or Visitors; (4) Customer Data in any manner; or (5) you or your Authorized Users' breach of any applicable privacy or data protection law, rule or regulation. Lucky Orange reserves the right, at its own expense and its sole discretion, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

10. LIMITATION OF LIABILITY

10.1 **Limitation.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES RELATED TO OR ARISING FROM THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOST DATA, LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED UNDER ANY THEORY OF LIABILITY AND WHETHER OR NOT A PARTY WAS AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL LUCKY ORANGE'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU TO LUCKY ORANGE FOR USE OF THE SERVICE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. YOU ACKNOWLEDGE AND AGREE THAT LUCKY ORANGE WOULD NOT ENTER INTO THIS AGREEMENT UNLESS IT COULD RELY ON THE LIMITATIONS DESCRIBED IN THIS PARAGRAPH.

11. GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION

- 11.1 **Choice of Law.** This Agreement and the rights of the parties hereunder will be governed by and construed in accordance with the laws of the State of Kansas, exclusive of conflict or choice of law rules. The parties agree that any controversy, claim or litigation arising out of or in connection with this Agreement shall be resolved in a federal or state court in the State of Kansas, and consent to the jurisdiction of such court over the parties hereto and such controversy, claim or litigation. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce.
- 11.2 **Dispute Resolution.** Before initiating any legal claim or action (except with respect to equitable relief or non-payment of fees due under this Agreement), the parties agree to refer any dispute, controversy or claim arising out of or related to this Agreement (collectively, a “**Claim**”) to members of the parties’ executive management (each such member a “**Representative**”) for resolution, which referral shall be evidenced by a written notice from either party to the other (the “**Referral**”). The parties’ representatives shall meet in person or via conference call within ten (10) business days of such Referral. If the parties have not reached a mutually agreeable resolution of the Claim within ten (10) business days after their initial meeting, or within an additional time period mutually agreed upon, then either party may request that such claim be submitted to a mediator agreed upon by the parties. The mediator shall assist in attempting to negotiate a resolution of the Claim. The mediation shall be non-binding unless the parties otherwise agree. Unless otherwise agreed by the mediator and parties, the mediation shall be held within twenty-one (21) days of the request for mediation. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Claim. Any information or documents disclosed by a party under this clause: (a) must be kept confidential; and (b) may only be used to attempt to resolve the Claim. Each party shall pay its own costs of complying with this Section 11.2 and shall equally share the cost of the mediator.

12. MISCELLANEOUS

- 12.1 **Independent Contractors.** You understand and expressly agree that you and Lucky Orange are independent contractors and not agents or employees of the other party. Neither you nor Lucky Orange has any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.
- 12.2 **Notices.** Any notice given under this Agreement shall be in writing and in the English language and shall be emailed to Lucky Orange at support@luckyorange.com, or if to you, to the email or physical address associated with your account. You hereby consent to receiving any notices relevant to the Service or this Agreement by email without requiring a handwritten signature for such notice to be effective.
- 12.3 **Force Majeure.** Neither party shall be liable for failing or delaying performance of its obligations (except for the payment of money) resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, natural disasters, earthquake, fire, flood, or other acts of God, labor conditions, power failures, and Internet disturbances.
- 12.4 **Consent to Do Business Electronically.** You agree not to contest the authorization for, or validity or enforceability of, electronic records and electronic signatures, or the admissibility of copies thereof, under any applicable law.
- 12.5 **Government End Authorized Users.** The Service and Documentation are comprised of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 and are provided to any civilian or military branch or agency of the U.S. government in accordance with the policies set forth in 48 C.F.R. 12.212 or 28 C.F.R. 227.7202-1 and 227.7202-3, respectively.
- 12.6 **Compliance with Laws and Export Control.** You shall abide by all applicable local, state, national and foreign laws, rules, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You acknowledge that Lucky Orange may discontinue provision or performance of the Service or terminate the license to the Service granted hereunder following any changes in any relevant applicable law, which in the sole discretion of Lucky Orange, makes performance impossible, or illegal. You further acknowledge that the Service and related technology and technical data (collectively “**Controlled Technology**”) may be subject to the import and export laws of any country where Controlled Technology is imported or re-exported, including U.S. Export Administration Regulations. You agree not to export, re-export, import or provide any Controlled Technology to any prohibited country (such as embargoed countries), entity, or person (such as designated nationals) for which a license or other governmental approval is required or is otherwise prohibited. All Controlled Technology is prohibited for export or re-export to prohibited countries as listed at: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> or to any country subject to similar trade sanctions.
- 12.7 **Equitable Relief.** You agree that your breach of the terms and responsibilities under this Agreement would cause irreparable harm and significant injury to Lucky Orange which would be both difficult to ascertain and for which there is no adequate remedy at law and that Lucky Orange shall be entitled, in addition to any other rights and remedies it may have, to injunctive relief (without the requirement of posting bond), specific performance and other equitable remedies to restrain any threatened, continuing, or further breach, or other equitable relief without prejudice to any other rights and remedies Lucky Orange may have under this Agreement.
- 12.8 **Entire Agreement.** This Agreement constitutes the entire agreement between you and Lucky Orange with respect to the subject matter hereof and supersedes all prior agreements, both oral and written. Lucky Orange may update this Agreement at any time

without notice to you. Any changes to this Agreement will be posted on the Lucky Orange website. You can determine when this Agreement was last revised by referring to the "Last Updated" legend at the top of the first page. UNLESS OTHERWISE STATED IN THE AMENDED VERSION OF THE AGREEMENT, ANY CHANGES TO THIS AGREEMENT ARE EFFECTIVE IMMEDIATELY UPON POSTING. Your continued use of the Service will constitute your agreement to any new provisions within the revised Agreement.

- 12.9 **Waiver; Severability.** Either party's failure to enforce any provision of this Agreement will not be deemed to be a waiver of its right to enforce them. If any term or provision of this Agreement will be held to be invalid, illegal, or unenforceable, the remaining terms and provisions of this Agreement will remain in full force and effect, and such invalid, illegal, or unenforceable term or provision will be deemed not to be part of this Agreement.
- 12.10 **Publicity.** You hereby consent to inclusion of your name and trademarks or service marks in Lucky Orange customer lists that may be published as part of Lucky Orange's marketing and promotional efforts. Lucky Orange may identify you as a customer when referring to lists of its customers.
- 12.11 **Assignment.** Neither you nor Lucky Orange may make any assignment of this Agreement or any interest herein, by operation of law or otherwise, without the prior written consent of the other; provided, however, that either party may assign its rights and obligations under this Agreement without the consent of the other party in the event the assigning party effects a corporate reorganization, consolidation, merger, or transfer of all or substantially all of its properties or assets. This Agreement shall inure to the benefit of and be binding upon the parties, their respective successors, and permitted assigns.
- 12.12 **Survival.** The provisions of this Agreement shall survive the expiration or termination of this Agreement, including, without limitation, provisions governing ownership and use of intellectual property, representations, disclaimers, warranties, liability, indemnification, governing law, jurisdiction, venue, remedies, rights after termination, and interpretation of this Agreement, will survive the expiration or termination of this Agreement for their full statutory period.

Exhibit A

Lucky Orange Data Processing Addendum

THIS DATA PROCESSING ADDENDUM ("DPA") forms part of the Terms of Service Agreement (the "**Agreement**") between Lucky Orange and Customer and reflects the parties' agreement with regard to the processing of Customer Personal Data. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

- A. Customer enters into this DPA on behalf of itself and, to the extent required under Applicable Data Protection Law, in the name and on behalf of its Authorized Affiliates, if and to the extent Lucky Orange processes Personal Data for which such Authorized Affiliates qualify as the Controller; and
- B. in providing the Service to Customer pursuant to the Agreement, Lucky Orange may Process Customer Personal Data on behalf of Customer, and the parties agree to comply with the following provisions with respect to any Personal Data.
- C. Lucky Orange and Customer hereby enter into this DPA effective as of the last signature date below. This DPA is incorporated into and forms part of the Agreement. In the event of a conflict between the terms of the Agreement and this DPA, the terms of this DPA will control. In the event of a conflict between the terms of the DPA and Standard Contractual Clauses, the Standard Contractual Clauses will prevail.

1. DEFINITIONS

"Applicable Data Protection Laws" means all laws and regulations, including the GDPR, CCPA, Colorado Privacy Act, Virginia Privacy Act, and other laws and regulations of the United States, European Union, the European Economic Area and their member states, Switzerland, and the United Kingdom, to the extent applicable to the Processing of Personal Data under the Agreement.

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Authorized Affiliate" means any of Customer's Affiliate(s) which (a) is subject to Applicable Data Protection Laws, and (b) is permitted to use the Service pursuant to the Agreement between Customer and Lucky Orange, but has not signed its own Order with Lucky Orange and is not a "Customer" as defined under the Agreement.

"Breach" means any breach of security leading accidentally or unlawfully to the destruction, loss, alteration, or unauthorized disclosure of or access to Personal Data

"CCPA" is defined in Section 13 of this DPA.

"Customer Personal Data" means Personal Data which is Processed by Lucky Orange on behalf of Customer in connection with the Service.

"GDPR" means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, applicable as of 25 May 2018, and repealing Directive 95/46/EC (General Data Protection Regulation). As used herein, "GDPR" includes the United Kingdom GDPR and its companion and successor clauses as applicable.

"Service" means the software and services that Lucky Orange provides to Customer as further detailed in the Agreement or applicable.

"Standard Contractual Clauses" means the standard contractual clauses attached hereto as Exhibit A.

"Controller", "Data Subject", "Personal Data", "Processing", "Processor", "Sensitive Data", "Subprocessor", and "Supervisory Authority" have the meanings set out in the GDPR.

2. PROCESSING OF PERSONAL DATA

- 2.1 **The Parties' Roles.** The parties agree that with regard to the Processing of Customer Personal Data, Customer is the Controller, Lucky Orange is the Processor, and that Lucky Orange will engage Subprocessors pursuant to the requirements of this DPA.
- 2.2 **Customer's Instructions.** By entering into this DPA, Customer instructs Lucky Orange to Process Customer Personal Data only in accordance with Applicable Data Protection Laws: (a) to provide the Service; (b) as documented in the Agreement, including this DPA; and (c) as further documented in any other lawful written instructions given by Customer and acknowledged by Lucky Orange as constituting instructions for purposes of this DPA.
- 2.3 **Lucky Orange's Responsibilities.** Lucky Orange shall keep Customer Personal Data confidential and shall only Process Customer Personal Data on behalf of and in accordance with Customer's documented instructions for Processing, including with regard to transfers of Customer Personal Data to a third country, in accordance with the Agreement. Lucky Orange shall promptly inform Customer if, in its opinion, any instruction of Customer infringes Applicable Data Protection Laws or if Lucky Orange is required by applicable law to Process Customer Personal Data in a manner which violates those instructions, in which case Lucky Orange will inform Customer of such requirement before Processing unless that law prohibits such information on grounds of public interest.

Lucky Orange shall not be required to comply with or observe Customer's instructions if such instructions would violate Applicable Data Protection Laws.

- 2.4 **Details and Scope of the Processing.** The subject-matter of the Processing of Customer Personal Data by Lucky Orange is the performance of the Service pursuant to the Agreement. The duration of the Processing, the nature, and purpose of the Processing, the types of Customer Personal Data and categories of Data Subjects Processed, are further specified in Annex 1 to the Standard Contractual Clauses.

3. RIGHTS OF DATA SUBJECTS

- 3.1 **Data Subject Requests.** To the extent legally permitted, Lucky Orange shall promptly notify Customer if it receives a request from a Data Subject to exercise the Data Subject's right of access, right to rectification, restriction of Processing, erasure ("**right to be forgotten**"), data portability, object to the Processing, or its right not to be subject to an automated individual decision-making (collectively, "**Data Subject Request**"). Taking into account the nature of the Processing, Lucky Orange shall assist Customer through appropriate commercially reasonable organizational and technical measures, insofar as this is possible, for the fulfillment of Customer's obligation to respond to a Data Subject Request. To the extent legally permitted, Customer shall be responsible for any costs arising from Lucky Orange's provision of such assistance.

4. LUCKY ORANGE PERSONNEL

- 4.1 **Confidentiality.** Lucky Orange shall ensure that its personnel engaged in the Processing of Customer Personal Data are informed of the confidential nature of the Personal Data and have executed written confidentiality agreements.
- 4.2 **Reliability.** Lucky Orange shall take commercially reasonable steps to ensure the reliability of any Lucky Orange personnel engaged in the Processing of Customer Personal Data.
- 4.3 **Limitation.** Lucky Orange shall ensure that Lucky Orange's access to Customer Personal Data is limited to those personnel assisting in the provision of the Service in accordance with the Agreement.

5. SUBPROCESSORS

- 5.1 **Lucky Orange's Subprocessors.** Lucky Orange has instructed or authorized the use of Subprocessors to assist Lucky Orange with respect to the performance of Lucky Orange's obligations under the Agreement. A list of Lucky Orange's Subprocessors shall be attached to this DPA as Annex 3. Lucky Orange shall inform Customer of any intended changes concerning the addition or replacement of Subprocessors, thereby giving Customer the opportunity to reasonably object to such changes. Lucky Orange shall enter into a contract with the Subprocessor whereby Lucky Orange shall require the Subprocessor to comply with obligations no less onerous than Lucky Orange's obligations under this DPA.
- 5.2 **Liability for Subprocessors.** Lucky Orange shall be liable for the acts and omissions of its Subprocessors to the same extent Lucky Orange would be liable if performing the Service of each Subprocessor directly under the terms of this DPA, except as otherwise set forth in the Agreement.

6. CUSTOMER OBLIGATIONS

- 6.1 **Compliance with Applicable Data Protection Laws.** Customer shall, in its use of the Service, Process Customer Personal Data in accordance with Applicable Data Protection Laws. For the avoidance of doubt, Customer's instructions for the Processing of Personal Data shall comply with Applicable Data Protection Laws, and Customer further acknowledges and agrees that its transfer of Customer Personal Data to Lucky Orange for Processing pursuant to this DPA and the Agreement shall comply with Applicable Data Protection Laws. Customer shall have sole responsibility for the accuracy, quality, and legality of Customer Personal Data and the means by which Customer acquired Customer Personal Data.
- 6.2 **Nature of Personal Data.** Customer acknowledges and agrees that, except as otherwise set forth in this [Section 6](#) or as expressly set forth in Annex 1 of the Standard Contractual Clauses, Customer Personal Data provided or made available to Lucky Orange for Processing in connection with the Service shall consist of information relating to Customer Data. Customer Data contains the categories of data set forth in Annex 1 of the Standard Contractual Clauses.
- 6.3 **Disclosure of Customer End Authorized User Information.** To the extent Customer, in its sole discretion, deems it necessary to disclose or otherwise provide to Lucky Orange Customer Personal Data other than the Customer Data set forth in Annex 1, Customer shall: (a) notify Lucky Orange in writing and in advance that it intends to disclose such Customer Personal Data to Lucky Orange, pursuant to a process as specified by Lucky Orange; and (b) ensure that such Customer Personal Data is encrypted in accordance with industry standard best practices.
- 6.4 **Sensitive Data.** Notwithstanding any provision to the contrary in this DPA, Customer shall not provide Lucky Orange with any high risk or Sensitive Data. In the event Customer does provide Sensitive Data, Customer shall comply with all Applicable Data Protection Laws, including without limitation applicable security and confidentiality measures in accordance with GDPR Article 32. Customer accepts full liability for any breaches of its responsibilities in this [Section 6.4](#).

- 6.5 **Lawful Basis.** Customer warrants that it has a lawful basis (as defined under Article 6 of GDPR or, with respect to Sensitive Data, as additionally defined in Article 9 of GDPR) for all Customer Personal Data it provides to Lucky Orange. If at any time during the Term of this Agreement, Customer discovers that it does not have a lawful basis for providing Lucky Orange any Customer Personal Data, then it shall notify Lucky Orange in writing immediately, and Lucky Orange upon such notification will cease Processing that Customer Personal Data.
- 6.6 **Indemnity.** Customer shall defend, indemnify and hold Lucky Orange harmless from and against all losses, damages, costs, charges, fines, fees, awards or other expenses, (including, without limitation, fines imposed by any Supervisory Authority or other regulator under the GDPR), arising out of or in connection with any action, claim, proceeding or allegation related to (a) Customer's disclosure of Customer Personal Data to Lucky Orange, or (b) Lucky Orange's Processing of such Personal Data in accordance with the terms of this DPA.
- 7. SECURITY**
- 7.1 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, both Lucky Orange and Customer will implement technical and organizational measures designed to ensure a level of security appropriate to the risk related to the Processing of the Personal Data and to protect Personal Data particularly against any accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access (whether such Personal Data is on Lucky Orange's or Customer's systems or facilities, in transit or being disposed of). Lucky Orange shall ensure that Personal Data communicated by or obtained from Customer are properly isolated from Personal Data from other customers.
- 8. PERSONAL DATA BREACH**
- 8.1 Lucky Orange shall take the following actions in the event of any Breach: (a) Lucky Orange shall notify the Customer about any Breach without undue delay, and in any event within seventy-two (72) hours, after becoming aware of it; (b) take all actions as may be required of a Processor by Applicable Data Protection Law, and more generally provide Customer with reasonable assistance in relation to Customer's obligations to notify any Supervisory Authority of the Breach and to the Data Subjects as the case may be; (c) maintain any records relating to the Breach, including the results of its own investigations and authorities' investigations; (d) cooperate with the Customer and take reasonable measures as necessary to prevent the Breach from occurring again; and (e) where Customer reasonably determines that a Breach notification is required under Applicable Data Protection Laws and to the extent the Breach was directly caused by Lucky Orange's breach of Applicable Data Protection Laws, Lucky Orange shall, as its sole liability and Customer's sole remedy under this DPA, reimburse Customer for the direct, verifiable, necessary and reasonably incurred third-party costs of the Customer in the (i) investigation of such Breach, (ii) preparation and mailing of notices to such Data Subjects and any Supervisory Authority as required by the GDPR and (iii) mitigation of any adverse effects of such infringement on a Data Subject.
- 9. AUDITS**
- 9.1 Upon not less than thirty (30) days prior written notice by Customer, and not more than once in any twelve (12) month period, Lucky Orange shall permit Customer and/or its authorized agents to audit its written records to the extent reasonably required in order to confirm that Company is complying with its obligations under this DPA or any Applicable Data Protection Law.
- 10. RETENTION AND DELETION OF CUSTOMER PERSONAL DATA**
- 10.1 At the Customer's written election, Lucky Orange shall delete or return all Customer Personal Data, and, in any event, shall delete all copies of Customer Personal Data within ninety (90) days after Lucky Orange's completion of the applicable Service, or unless otherwise required by Applicable Data Protection Law.
- 11. AUTHORIZED AFFILIATES**
- 11.1 **Contractual Relationship.** The parties acknowledge and agree that, by executing the Agreement, the Customer enters into the DPA on behalf of itself and, as applicable, in the name and on behalf of its Authorized Affiliates.
- 11.2 **Communication.** Customer shall remain responsible for coordinating all communication with Lucky Orange under this DPA and be entitled to make and receive any communication in relation to this DPA on behalf of its Authorized Affiliates.
- 11.3 **Rights of Authorized Affiliates.** Except where Applicable Data Protection Laws require an Authorized Affiliate to exercise a right or seek any remedy under this DPA against Lucky Orange directly by itself, the parties agree that Customer shall (a) exercise any such right or seek any such remedy on behalf of the Authorized Affiliate, and (b) exercise any such rights under this DPA in a combined manner for all of its Authorized Affiliates together.
- 12. INDEMNITY; LIMITATION OF LIABILITY**
- 12.1 **Indemnity.** In the event a Data Subject brings a claim against either or both parties (under Article 79 of the GDPR or any other cause of action) for alleged infringement of the GDPR, each party shall at its own expense control the defense of any such claim (or its portion of the defense) and remain solely responsible for any costs, expenses and liabilities related thereto, including legal fees or

any amounts awarded against it by a court or made by it in settlement; provided however, that where each party is responsible for a portion of the damages suffered by a Data Subject for the same incident or series of incidents, and the Data Subject has recovered full compensation from only one party (the “**Compensating Party**”) pursuant to Article 82(4) of the GDPR, then the Compensating Party shall be entitled to claim back from the other party that portion of the compensation corresponding to the damage caused by such other party.

- 12.2 **Limitation of Liability.** For the avoidance of doubt, except as set forth in this Section 12.2, neither party shall be liable to the other party resulting from such other party’s infringement of the GDPR. By way of example and not of limitation, in the event a Supervisory Authority imposes any fines, penalties or other sanctions on or against a party (the “**Infringing Party**”), the non-infringing party shall not indemnify or otherwise hold the Infringing Party harmless and the Infringing Party shall not seek indemnification, contribution or other recovery from the non-infringing party in connection therewith.

13. CALIFORNIA SPECIFIC PROVISIONS

- 13.1 This Section 13.1 is applicable to California businesses only and is intended to provide guidance on Lucky Orange’s compliance with Cal. Civ. Code § 1798.100 et. seq., otherwise known as the “**California Consumer Privacy Act of 2018**” or “**CCPA**” as amended by the California Privacy Rights Act of 2020 in the performance of the Service. Capitalized terms used throughout this Section 13.1 but undefined elsewhere shall have their respect meanings under CCPA. In performing the Service, Lucky Orange operates as Customer’s service provider under the CCPA. As Customer’s service provider, Lucky Orange processes certain personal information, in accordance with Customer’s instructions, to fulfill a legitimate business purpose for Customer. The business purpose(s) for which Customer has retained Lucky Orange for include any one or more of the following activities: maintaining or servicing Lucky Orange accounts, providing customer service in connection with the Service, processing or fulfilling orders and transactions involving your website patrons, providing advertising or marketing services through the Lucky Orange proprietary tools, providing analytic services, or providing similar services on Customer’s behalf. Aside from fulfilling the business purpose for Customer, Lucky Orange does not disclose or resell Personal Information for any other commercial purpose, except in certain cases where the personal information has been pseudonymized or is considered aggregate consumer information. The CCPA provides California Consumers (“**Consumers**”) the right to request that Lucky Orange delete the Consumer’s personal information under certain conditions. When Lucky Orange receives a request to delete personal information from a Consumer, Lucky Orange will verify the identity of the Consumer and then, as applicable, direct its service providers to delete the Consumer’s personal information approved for deletion. Accordingly, in the event that Customer receives a verifiable Consumer request to delete personal information held by Lucky Orange (as determined in Customer’s sole discretion), Lucky Orange shall fulfill such request without delay, provided Customer makes such request using the form provided by Lucky Orange. Lucky Orange shall not respond to any other request made in any other manner by Customer so as to ensure the confidentiality, integrity, and security of the personal information it processes.

14. EUROPEAN SPECIFIC PROVISIONS

- 14.1 **Data Protection Impact Assessment.** Taking into account the nature of the Processing, upon Customer’s reasonable request and at Customer’s cost, Lucky Orange shall provide Customer with reasonable cooperation and assistance needed to fulfill Customer’s obligations under the GDPR to carry out a data protection impact assessment related to Customer’s use of the Service, to the extent Customer does not otherwise have access to the relevant information, and to the extent such information is available to Lucky Orange. Lucky Orange shall provide reasonable assistance to Customer in the cooperation or prior consultation with the Supervisory Authority in the performance of its tasks related to this Section 14.1, to the extent required under the GDPR and taking into account the nature of the Processing and the information available to Lucky Orange.
- 14.2 **Standard Contractual Clauses.** The Standard Contractual Clauses, published on June 4, 2021 and available at: https://ec.europa.eu/info/system/files/1_en_annexe_acte_autonome_cp_part1_v5_0.pdf (“**Standard Contractual Clauses**”) apply to: (a) the legal entity that has executed the Standard Contractual Clauses as the data exporter and its Authorized Affiliates and, (b) the Affiliates of Customer established within the European Economic Area, Switzerland and the United Kingdom, which have signed an applicable Order for the Service. For the purpose of the Standard Contractual Clauses, the aforementioned entities shall be deemed “data exporters.” The parties hereby acknowledge and agree that by executing the Agreement and this DPA, the parties have entered into the Standard Contractual Clauses with Lucky Orange as the “data importer.” The parties further agree that Module 2 (Transfer from Controller to Processor) of the Standard Contractual Clauses is selected with the following in effect: In Clause 9(a) (Use of Subprocessors) – Option 2 shall apply. In Clause 11(a) (Redress) – the Optional provision shall not apply. In Clause 17 (Governing Law) – Option 1 shall apply, and Irish law shall govern. In Clause 18(b) (Choice of Forum and Jurisdiction) – the courts of Ireland shall have jurisdiction.

ANNEX I TO THE STANDARD CONTRACTUAL CLAUSES

This Annex forms part of the Clauses and must be completed and signed by the parties

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

A. LIST OF PARTIES

Data exporter:

Data exporter(s):

Name: ...

Address: ...

Contact person's name, position and contact details: ...

Activities relevant to the data transferred under these Clauses: ...

Signature and date: ...

Role (controller/processor): Controller

Data importer:

Name: Lucky Orange LLC

Address: 8665 W 96th St Suite #100, Overland Park, KS 66212

Contact person's name, position and contact details: Danny Wajcman, Chief Operating Officer, 8665 W 96th St Suite #100, Overland Park, KS 66212

Activities relevant to the data transferred under these Clauses: ... Performance of Service to Customer under the Agreement.

Signature and date: ...

Role (controller/processor): Processor

B. DESCRIPTION OF TRANSFER

Categories of data subjects whose personal data is transferred

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

- Customer's Visitors and Users of its website(s).

Categories of personal data transferred

The personal data transferred concern the following categories of Customer Data:

- the pages visited
- the visitor's mouse movements and clicks
- keystroke data
- HTML data on a page visited by a visitor (if such HTML data includes Personal Information)
- IP address and header information, which includes:
 - browser type
 - geolocation
 - operating system
 - language
 - screen resolution

- referring URL
- Freeform text collected from chat features

Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialized training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.

- None

Nature of processing

- The personal data transferred will be subject to the following basic processing activities:
 - The objective of Processing of Personal Data by the data importer is the performance of the Service pursuant to the Terms of Service Agreement, in particular to provide Lucky Orange's Service. The Processing of Personal Data will be performed in the United States.

Purpose(s) of the data transfer and further processing

- See above

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

- Retention set forth in Lucky Orange Privacy Statement

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

- Transfer to Subprocessors is for the performance of processing functions in accordance with instructions of Lucky Orange. Subprocessors shall process for only so long as needed to complete their processing obligations.

C. COMPETENT SUPERVISORY AUTHORITY The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C, shall act as competent supervisory authority. The supervisory authority is established in Ireland.

EU Business Partners

10 Ashe Street, Clonakilty, County Cork, P85 E4303, Ireland

info@eubusinesspartners.com

Flor McCarthy, Director

ANNEX II TO THE STANDARD CONTRACTUAL CLAUSES

This Annex forms part of the Clauses and must be completed and signed by the parties and sets forth a description of the technical and organizational measures implemented by the data importer(s) (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons.

The data importer implements the following measures:

- pseudonymization and encryption of personal data
- ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services
- ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident Processes for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures in order to ensure the security of the processing
- user identification and authorization Measures for the protection of data during transmission
- protection of data during storage Measures for ensuring physical security of locations at which personal data are processed Measures for ensuring events logging
- ensuring system configuration, including default configuration
- internal IT and IT security governance and management Measures for certification/assurance of processes and products
- ensuring data minimization

- ensuring data quality Measures for ensuring limited data retention
- ensuring accountability
- allowing data portability and ensuring erasure

For transfers to (sub-) processors, also describe the specific technical and organizational measures to be taken by the (sub-) processor to be able to provide assistance to the controller and, for transfers from a processor to a sub-processor, to the data exporter

The measures set forth above are required of sub-processors to the extent, and based upon, the nature of the processing carried out by the particular sub-processor.

ANNEX III TO THE STANDARD CONTRACTUAL CLAUSES

This Annex forms part of the Clauses and must be completed and signed by the parties. The list of subprocessors approved by the data importer as of the effective date of the DPA is as set forth below:

Subprocessor	Purpose
Amazon Web Services	Cloud Infrastructure Hosting
Google Inc.	Cloud Infrastructure Hosting
Elastic Cloud	Database Management
Help Scout	Customer Support and Communication
Q Box	Database Management
Brain Tree (owned by PayPal)	Credit Card Payment Processing System
One Page CRM	Customer Relationship and Account Management Tool
Mail Gun	Transactional and report delivery email distribution system
Postmark	Email delivery service
Salesforce/Pardot	Email delivery service and CRM
Profitwell	Payment optimization solution