Higher Logic - Online License Agreement

This Online License Agreement ("**Agreement**"), entered into by and between Higher Logic, LLC ("**Higher Logic**"), a Delaware limited liability company, and the customer identified on the signature line ("**Subscriber**"), governs the order, provision and use of the Higher Logic services described on the executed Order Form to which this Agreement is attached, which may include the following: (i) an online version of Higher Logic's hosted community platform, (ii) marketing automation and analytics services, and/or (iii) other cloud-based service offerings described on the Order Form (collectively, the "**Software Services**"). From time to time, Higher Logic and Subscriber may add modules to, and may adjust quantities and other terms set forth in, the Order Form. The terms and conditions of the Order Form, and any adjustments and modules thereto, are and shall be incorporated herein by reference. In the event of any conflict between the terms of this Agreement and the terms of an Order Form, the terms of the Agreement shall control unless the Order Form indicates the specific provision(s) of this Agreement that it overrides.

1. License Grant and Restrictions; Professional Services.

a.   **Software Services**. Subject to Subscriber's compliance with the terms of this Agreement and the Order Form, including, without limitation, the timely payment of Fees as described in Section 6 ("**Fees and Payment**"), Higher Logic hereby grants to Subscriber a worldwide, non-exclusive, non-transferable, revocable right (without the right to grant sublicenses), during the Term, to access and use (and to enable its employees, consultants and other authorized users (collectively, the "**Users**") to use) the Software Services for Subscriber's internal business purposes only in accordance with the terms of this Agreement and the Order Form. The foregoing license right shall include any updates, upgrades, modifications, corrections and other changes made by Higher Logic to the Software Services during the Term.

b.   **Subscriber Data**. Subscriber hereby grants to Higher Logic a non-exclusive, non-transferable license to store, process and use Subscriber Data (as defined at Section 4) for the purpose of providing the Software Services, including for the purpose of generating Derived Data as described at Section 4(c) below.

c.   **Restrictions**. Subscriber shall not, and shall not directly or indirectly permit any third party to: (a) license, sublicense, sell, resell, transfer, lease, rent, assign, distribute or otherwise make available to any third party, other than its Users, the Software Services; (b) copy, modify or

make derivative works of the Software Services; (c) reverse engineer, disassemble or reverse compile the Software Services; or (d) access or use the Software Services in order to: (x) design, develop, build, market or support a competitive product or service; (y) design, develop, build, market or support a product using similar ideas, features, functions or graphics of the Software Services; or (z) copy any ideas, features, functions or graphics of the Software Services.

d. **Acceptable Use Policies**. Subscriber and its Users shall not, directly or indirectly, and shall not permit any third party to: (i) access or use the Software Services, in whole or in part, except as expressly provided in this Agreement or in an Order Form; (ii) send spam or otherwise duplicative or unsolicited messages in violation of Applicable Laws (as defined in Section 3 below); (iii) use the Software Services to harvest or collect e-mail addresses or other contact information of third parties by any means for the purposes of sending unsolicited e-mails or other unsolicited communications; (iv) use automated scripts to collect information from or otherwise interact with the Software Services; (v) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or that violates of third party privacy rights; (vi) use the Software Services to send or store material containing viruses, worms, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (vii) interfere with or disrupt the integrity or performance of the Software Services or the data contained therein; (viii) attempt to gain unauthorized access to the Software Services or its related systems or networks; or (ix) use the Software Services in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Software Services. Subscriber acknowledges that, in the event of a violation of the foregoing restrictions, Higher Logic shall have the right to suspend, restrict or terminate any User account associated with the restricted activity, or this Agreement, as appropriate; provided that such right or any such suspension by Higher Logic shall not constitute a waiver of Subscriber's responsibility for User conduct.

e. **Third-Party Software**. Certain third-party services and applications are made available to Subscriber on the Higher Logic platform, to include applications developed for their integration with the Software Services, and are otherwise provided by Higher Logic as a component of and/or for use with the Software Services ("**Third-Party Software**"). Such Third-Party Software shall be deemed to be incorporated within the Software Services for the purposes of this Agreement, and shall be incorporated into the license grant set forth herein, except to the extent either (i) expressly provided to the contrary in this Agreement or an Order Form, and/or

(ii) a User is required to enter into separate terms and conditions relating to such Third-Party Software. Subscriber acknowledges and agrees that Higher Logic is not responsible for Subscriber's use of, nor for any damage or loss caused or alleged to be caused by or in connection with Subscriber's enablement, access or use of, any Third-Party Software that Subscriber has elected to integrate into the Software Services and/or that is subject to separate terms and conditions. Higher Logic does not provide any warranties whatsoever for such Third-Party Software, and is not responsible for providing technical support therefor.

f. **Professional Services**. Higher Logic shall perform professional services relating to the Software Services (the "**Professional Services**") in the form, type and manner provided in an Order Form, to include, without limitation, data integration services.

2. Access and Availability.

a. **User Access**. Higher Logic shall provide Subscriber an administrator password and login code, and Subscriber shall permit User access through a browser interface with a user ID and password. Subscriber may establish such user accounts ("**User Accounts**") as Subscriber sees fit subject to the terms of this Agreement. Subscriber will require each User to keep passwords used to access the Software Services confidential and not authorize any third party to access or use the Software Services on their behalf. Subscriber may, at Subscriber's sole discretion, elect to configure the Software Services to provide Higher Logic personnel access to Subscriber's platform.

b. **Service Availability**. Higher Logic will use its commercially reasonable efforts to: (a) maintain the security of the Software at a level that is reasonable in its industry; (b) ensure that the Software is available 99.5% monthly to the Subscriber and performing substantially in accordance with the online help documentation (where applicable); (c) monitor the system 24/7; except for: (y) scheduled downtime for maintenance; and (z) downtime caused by circumstances beyond the reasonable control of Higher Logic. The parties understand and agree that the foregoing states Higher Logic's sole liability to Subscriber and any third party with respect to the availability of the Software. Higher Logic contracts with third party service providers to provide network and internet services that provide the backbone for the Software Services provided by Higher Logic (the "Network Providers"). All bandwidth and performance levels and downtime for Software Services are subject to the terms of any applicable service level agreement between Higher Logic and the Network Providers.

3. Subscriber's Responsibilities.

a. **End User Terms and Compliance**. Subscriber acknowledges that Users may be subject to the terms of applicable click-through and other user licenses, privacy terms, terms of use, acceptable use policies (including as referenced at Section 1(d)) and other policies imposed by Higher Logic on all users of the Software Services, as the case may be. Subscriber covenants and agrees to implement and maintain the terms and conditions that govern each User's use of the Software Services, and shall ensure that each User shall abide by all applicable local, state, national and foreign laws, directives, treaties and regulations of all government authorities (collectively, "**Applicable Laws**"), including, but not limited to, those related to data privacy, international communications and the transmission of technical or personal data. Subscriber acknowledges that Higher Logic shall be entitled to update and modify the terms of its policies from time to time; provided that such policies, except to the extent required by law or applied to all Higher Logic subscribers, shall not adversely impact the rights of Subscriber. In the event that a policy update or modification materially adversely impacts Subscriber's rights, Subscriber shall provide not less than thirty (30) days' written notice thereof, and, upon expiration of such thirty day period, Higher Logic may elect to amend or waive Subscriber's compliance obligation, and, if no such amendment or waiver is made, Subscriber may elect to terminate the Order Form or this Agreement.

b. **User Accounts**. Subscriber shall be solely responsible for: (i) all activity occurring under each User Account, (ii) the security and confidentiality of each User Account ID, (iii) all costs, fees, liabilities or damages incurred through use of each User Account ID, and (iv) all hardware, software and other equipment necessary for each User to connect to, access and use the Software Services.

c. **E-Mail Marketing Content**. Subscriber is solely and exclusively responsible for the content of all messages, Subscriber e-mailing lists and Subscriber mailings. Subscriber agrees to "unsubscribe" or otherwise remove any recipient from its e-mailing lists immediately upon receipt of a request from a recipient or Higher Logic to do so. Subscriber agrees to import any existing unsubscribe and/or suppression lists prior to publishing a mailing. Higher Logic may place a logo image and an "unsubscribe" message on the bottom of all mailings sent by Subscriber. Subscriber specifically agrees, without limitation, not to provide messaging services for any third parties or as a service bureau.

d. **Support Requests; updates**. After the date on which the Software Services are first made available to Subscriber, Subscriber may submit support requests through the Higher Logic Users' Group (HUG) website for support tickets. Requests outside of normal Software Services support will be billed at the then-current hourly rate. Subscriber acknowledges that operation of the Software Service may rely upon the integration and interface of the Software Services with data sources and applications supplied and maintained by Subscriber. In the event of any change to such data sources, applications or interfaces that have been supplied or maintained by Subscriber, Subscriber shall provide not less than sixty (60) days' advanced, written notice of such change to Higher Logic. Higher Logic covenants and agrees to undertake commercially reasonable efforts to update, modify and/or adapt the Software Services on the basis of any such data integration; provided that Higher Logic may reasonably require Subscriber to enter into a task order or other agreement and to pay additional, mutually agreeable fees pertaining to such work.

4. Data Rights.

a. **Subscriber Data**. While using the Software Services, Subscriber and Users may have the opportunity to input data, information and materials ("**Subscriber Data**"). Subscriber agrees that Subscriber Data shall not contain social security numbers, financial account information, public health information, driver's license numbers, birthdates, payment card data or similarly sensitive information (collectively, "**Sensitive Data**"), and that any controls or inputs required by Subscriber will not solicit Sensitive Data. Further, by using the Software Services, Subscriber confirms that it will not input, and will not solicit Users to input, Sensitive Data or otherwise use the Software Services in a manner that could give rise to obligations under the Health Insurance Portability Act of 1996, the Gramm-Leach-Bliley Act or other applicable laws relating to Sensitive Data or personal information. All Subscriber Data is, or shall be, and shall remain the property of Subscriber. Without Subscriber's prior written approval (but subject to Sections 4(b) and 4(c) below, and the remainder of this Section 4(a)), Subscriber Data shall not be: (i) used by Higher Logic other than for the sole purpose of and to the extent necessary to provide the Software Services to Subscriber; (ii) disclosed, sold, assigned, leased or otherwise provided to third parties by Higher Logic or its agents or subcontractors except as necessary to provide the Software Services to Subscriber; or (iii) commercially exploited by or on behalf of Higher Logic or its agents or subcontractors. Additionally, the parties understand and agree that Higher Logic shall have the right to access and use Subscriber Data for the

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limited purpose of managing Higher Logic's data network and in order to support and update the Software Services. Subscriber accepts any and all liability for claims arising out of or related to Sensitive Data. Unless otherwise indicated on an Order Form, Higher Logic's access to Sensitive Data will be similarly limited during its performance of Professional Services.

b. **Collected Data**. Higher Logic may collect and maintain publicly available information and data and third-party data from various sources (to include aggregated or de-identified data from other customers) (collectively, the "**Collected Data**") for use while performing the Software Services for Subscriber. Relative to Subscriber, all Collected Data is or shall be, and shall remain, the property of Higher Logic.

c. **Derived Data**. Higher Logic may generate or develop information and data (collectively, the "**Derived Data**") resulting from the manipulation or analysis of Subscriber Data and Collected Data based upon its operation and provision of the Software Services, along with any associated databases, algorithms, external data, calculations and other processes, methods or tools used by Higher Logic and/or its software platform. Derived Data shall be deemed to include the aggregated, de-identified and statistical information collected by Higher Logic from the operation of the Software Services and processing, manipulation and analysis of Customer Data, including, without limitation, the number of records, the number and types of transactions, configurations, reports processed in the Software Services, and performance results for the Service. All Derived Data (and, in relation to Subscriber for purposes of this Agreement, all external data) is, or shall be, and shall remain the property of Higher Logic. Higher Logic understands and acknowledges that Subscriber may use, manage, modify, summarize, maintain, create derivative works of, and update Derived Data. Subscriber acknowledges agrees that during and after the Term of an Order Form: (i) Higher Logic may retain and use Derived Data for purposes of providing the Software Services to Subscriber and to third-party customers, and for conducting research, development and product improvement efforts; (ii) Higher Logic may share Derived Data with any third-party service providers providing services to Higher Logic or collaborating with Higher Logic, subject to obligations of confidentiality; (iii) Higher Logic may disclose Derived Data if required under applicable law, regulation or court order, consistent with the requirements of Section 9 (Confidential Information); and (iv) Higher Logic may use and share with third parties any Derived Data in aggregated or de-identified form such that the source of such data cannot be identified. Subscriber acknowledges that Derived Data may be commercially exploited by or

on behalf of Higher Logic for commercial purposes, subject to the restrictions set forth above and in this Agreement.

d. **Quality of Data; Compliance**. The parties understand and agree that Subscriber shall have sole responsibility for: (a) the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all Subscriber Data; (b) Subscriber's and each User's deletion of, destruction of or failure to store any Subscriber Data; (c) ensuring Users do not provide Subscriber Data that contains any Sensitive Data; and (d) enforcing the terms and conditions that govern each User's use of the Software Services, as applicable. In addition, Subscriber hereby represents, warrants and covenants that all Subscriber Data was and will be created, collected, used, disclosed, maintained, stored and transmitted by Subscriber in compliance with all Applicable Laws. Subscriber shall not, and shall cause each User to not, provide export-controlled material, provide export-controlled services, or engage with prohibited third parties pursuant to this Agreement.

e. **Data Retrieval and Deletion**. If requested by Subscriber during the Term of this Agreement and to the extent available, Higher Logic will make available to Subscriber, within thirty (30) days from receipt of Subscriber's request and subject to payment by Subscriber of a reasonable charge, a file of Subscriber Data in an industry-standard format. Following the termination or expiration of this Agreement or an Order Form, Higher Logic will delete any Subscriber Data not later than thirty (30) days following such expiration or termination.

5. Intellectual Property; Indemnification.

a. **Software Services IP**. Higher Logic, and where applicable its licensors, own all right, title and interest, including all related intellectual property rights, in and to the Software Services, Collected Data and Derived Data, subject only to the licenses expressly granted to Subscriber in this Agreement. Subscriber acknowledges and agrees that any proprietary information and know-how, techniques, algorithms, and processes provided by or contained in the Software Services, Collected Data and/or Derived Data, or any modification, component or extraction thereof, constitute trade secrets, Confidential Information and other intellectual property rights of Higher Logic or its suppliers and shall only be used by Subscriber in accordance with the terms and conditions of this Agreement. Therefore, Subscriber shall protect such trade secrets and confidential information in accordance with the requirements of this Agreement. The Parties will not jointly create any Intellectual Property Rights. Higher Logic shall own and

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possess exclusive rights to any improvements, modifications, enhancement or upgrades made to the Software Services during the Term hereof. If the Parties wish to intentionally jointly develop any intellectual property rights, ownership of and agreements concerning such development will be detailed in a separate written agreement entered into by the Parties prior to the start of any such development.

b. **Indemnification for Infringement**.

(i) Higher Logic will indemnify, defend, and hold harmless Subscriber from and against any loss, liability, damage or expense (including reasonable attorneys' fees) that are finally awarded by a court of competent jurisdiction or agreed to by Higher Logic in settlement in connection with Subscriber's defense of any third party claims, demands, suits or proceedings alleging that Subscriber's use of the Software Services, in whole or in part, when used in accordance with documentation or other instructions from Higher Logic, directly infringes any copyright or trade secret right arising under United States law (a "Claim") and, provided that: (a) Subscriber promptly notifies Higher Logic in writing of such Claim with reasonable details setting forth why Subscriber believes that Higher Logic has an indemnity obligation; (b) Subscriber accords Higher Logic, at Higher Logic's choice, sole control of the defense and/or settlement of the Claim; and (c) Subscriber furnishes to Higher Logic, at Higher Logic's request, all relevant information available to Subscriber and reasonable cooperation and assistance in defense and settlement of the Claim.

(ii) Higher Logic shall not be required to indemnify Subscriber to the extent a Claim relating to subsection (b)(i) above arises out of, and would not have occurred but for, any of the following exclusions: (a) modification of the Software Services by Subscriber or its employees, consultants, contractors or other representatives in conflict with Subscriber's obligations or as a result of any prohibited activity as set forth herein; (b) use of the Software Services in a manner inconsistent with Higher Logic's documentation or the rights granted herein; or (c) use of the Software Services in combination with any hardware, software or other products or services not provided or otherwise authorized by Higher Logic. If Subscriber is enjoined from using the Software Services or Higher Logic reasonably believes it will be enjoined, Higher Logic shall have the right, at its sole option, to obtain for Subscriber the right to continue use of the Software Services or to replace or modify the Software Services so that they are no longer infringing. If neither

of the foregoing options is reasonably available to Higher Logic, then use of the Software Services may be terminated at Higher Logic's option and Higher Logic's sole liability shall be to refund any prepaid fees for the Software Services that were to be provided after the effective date of termination.

This Section 5(b) constitutes the Subscriber's sole and exclusive remedy and Higher Logic's only liability in respect of claims of intellectual property infringement.

6. Fees and Payment.

a. **Invoicing; Payments**. Unless otherwise provided in an applicable Order Form, Higher Logic shall invoice Subscriber annually in advance for any recurring amounts due pursuant to an Order Form.   Subscriber shall pay all amounts owed to Higher Logic hereunder (collectively, "Fees") within thirty (30) days of the invoice date without setoff, counterclaim or deduction, except for amounts disputed in good faith by Subscriber pursuant to subsection (b) below. Orders for additional Software Services licenses or Professional Services shall be subject to additional Fees and may be subject to additional terms.

b. **Disputes; Suspension Right**. Subscriber must notify Higher Logic in writing of any dispute within thirty (30) days of Subscriber's receipt of an invoice, setting forth in reasonable details grounds for disputing the invoice. Higher Logic will investigate and resolve any dispute raised by Subscriber within sixty (60) days.   If the parties determine that Subscriber owes any portion of the disputed amount, Subscriber shall have thirty (30) days from the date of the resolution of the dispute to pay such amount, which will not bear interest or late charges until the expiration of the thirty (30) day period. Subscriber understands and agrees that its failure to pay undisputed Fees when due shall give Higher Logic the right to suspend access to the Software Services and may be treated as a material breach of this Agreement pursuant to the terms of Section 7 ("Term and Termination").

c. **Fee Increases; Limitations**. The Fees shall remain as stated for the initial term of this Agreement as set forth on the Order Form. Upon the expiration of the initial term, Higher Logic may increase such Fees by up to five percent (5%) from the prior Fees upon not less than sixty (60) days' written notice to Subscriber. Fees are calculated by Higher Logic based upon certain system resource usage assumptions ("Service Limits") set forth in the Order Form. In the event Higher Logic determines that Subscriber has exceeded applicable Service

Limits, Higher Logic shall notify Subscriber, and Higher Logic shall have the right to impose additional commercially reasonable fees as set forth in the Order Form corresponding to such excess use.

d. **Taxes**. If Higher Logic has the legal obligation to pay or collect taxes for which Subscriber is responsible, including but not limited to, sales, use, transfer, privilege, excise, and all other taxes and duties ("Taxes") that are levied or imposed by the reason of performance of Higher Logic under this Agreement, the appropriate amount shall be invoiced to and paid by Subscriber, unless Subscriber provides Higher Logic with a valid tax exemption certificate authorized by the appropriate taxing authority and Subscriber agrees to pay, and to indemnify and hold Higher Logic harmless from, any such Taxes excluding taxes based on Higher Logic's net income, employees or property.

7. Term and Termination.

a. **Initial Term**. The initial term of this Agreement shall commence upon the signature date of the Order Form to which this Agreement is attached and shall be co-terminus with the term set forth in the Order Form (the "Initial Term"). Following expiration of the Initial Term, this Agreement and the applicable Order Form shall thereafter automatically renew and continue in one (1) year increments (each a "Renewal Term" and together with the Initial Term, the "Term"), unless either party gives the other party at least sixty (60) days' written notice of non-renewal prior to the expiration of the Initial Term or Renewal Term, as the case may be.

b. **Termination or Suspension for Breach**. Either party may terminate this Agreement upon written notice to the other party if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice describing the breach in reasonable detail. Non-payment by Subscriber of any amount due hereunder that has not been cured by the date that is ten (10) business days past the due date therefor shall be deemed to constitute a material breach. "Business day" refers to any day other than a weekend, holiday or other day on which banking institutions in New York City are authorized or obligated by law or executive order to close. Higher Logic may elect to immediately suspend the Software Services during the pendency of any material breach; provided that any such suspension shall not constitute a waiver of Higher Logic's right to terminate the Software Services or Order Form in accordance with the terms hereof.

c. **Effect of Termination**. In the event of any expiration or termination of this Agreement, all Order Forms and all licenses granted to Subscriber shall immediately terminate. Subscriber agrees and acknowledges that in such case Higher Logic has no obligation to retain any Subscriber Data and may delete such Subscriber Data in accordance with the requirements of Section 4(e). The termination of this Agreement, whether for breach or otherwise, shall not affect any obligations or liabilities of the parties arising prior to the date of termination, including, without limitation, Subscriber's obligation to pay Fees.

8. Warranty.

a. **Software Services Warranty**. Higher Logic represents and warrants that, during the Term, the Software Services will include the functionality set forth in the published specifications for the Software Services. As Subscriber's sole and exclusive remedy for any breach of the foregoing limited warranty, Higher Logic will, in its sole discretion, either (i) use commercially reasonable efforts to remedy the nonconformity within a commercially reasonable period of time or (ii) terminate this Agreement and refund the prepaid fees for the unexpired remaining unused term. The Higher Logic warranties set forth above shall not apply to any nonconformities resulting from Subscriber's or its Users' acts or omissions or noncompliance with this Agreement or the documentation for the Software Services or resulting from any hardware, software, data, materials or other products or services not developed or provided by Higher Logic.

b. **Disclaimers**. THE SOFTWARE SERVICES ARE PROVIDED STRICTLY ON AN "AS IS" BASIS. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, HIGHER LOGIC MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SOFTWARE SERVICES OR ANY MATTER WHATSOEVER. HIGHER LOGIC AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT: (A) THE USE OF THE SOFTWARE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; (B) THE SOFTWARE SERVICES WILL MEET SUBSCRIBER'S REQUIREMENTS OR EXPECTATIONS; (C) ERRORS OR DEFECTS IN THE SOFTWARE SERVICES WILL BE CORRECTED; OR (D) THE SOFTWARE SERVICES OR THE

SERVER(S) THAT HOST THE SOFTWARE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

9. Confidential Information.

a. **Definition**. Higher Logic and Subscriber understand and agree that (a) any software utilized by Higher Logic in the provision of the Software Services and its respective source code; (b) Subscriber Data, Collected Data and Derived Data; (c) each party's business or technical information, including, but not limited to, mailing lists, documentation, training materials, any information relating to software plans, designs, costs, prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how that is designated by the disclosing party as "confidential" or "proprietary" or the receiving party knows or should reasonably know is confidential or proprietary, shall be deemed "Confidential Information."

b. **Exclusions**. Nothing in this Agreement will prohibit or limit the receiving party's use of the disclosing party's Confidential Information that the receiving party can evidence by its written records (a) was previously known to it without an obligation not to disclose such information, (b) was independently developed by or for it without use of the disclosing party's Confidential Information, (c) was acquired by it from a third party which was not, to the receiving party's knowledge, under an obligation not to disclose such information, or (d) was or becomes publicly available through no breach of this Agreement.

c. **Protection**. The receiving party will protect the confidentiality of the disclosing party's Confidential Information in the same manner that it protects the confidentiality of its own similar information, but in no event using less than a reasonable standard of care. The receiving party will restrict access to the disclosing party's Confidential Information to those of the receiving party's and its Affiliates' employees and contractors who have a need to know such Confidential Information in connection with performing is obligations or exercising its rights under this Agreement, provided that such parties are bound by obligations of confidentiality at least as restrictive as the terms of this Section. The foregoing obligations shall survive any expiration or termination of this Agreement. Notwithstanding the foregoing, the parties shall be entitled to access, use and process the Subscriber Data, Collected Data and Derived Data as set forth in Section 4.

d. **Compelled Disclosure**. A party may disclose the Confidential Information of the other party in the event such disclosure is required to be disclosed pursuant to court or government agency order or rule, and provided that, before disclosing any Confidential Information, such party provides reasonable notice of such order or rule, giving the other party opportunity to object to or limit such disclosure unless the party is prohibited from providing such notice under the applicable order or rule.

e. **Restrictions on Personal Information**. Subscriber will exercise commercially reasonable efforts not to disclose or provide access to any Sensitive Data to Higher Logic (to include disclosure or access as Subscriber Data). In the event that Subscriber discloses or provides such access to Higher Logic, Higher Logic, except as otherwise expressly agreed in a writing executed by a duly authorized representative of each party, will have no duty with respect to such Sensitive Data.

f. **Publicity**. Higher Logic may use Subscriber's name, logo, and trademarks on the Higher Logic websites for advertising and marketing the Software Services. Subscriber and Higher Logic may publicly refer to the other party as a service provider and customer, respectively.

10. Data Security and Privacy.

a. **User and Subscriber Notice Requirements**. Subscriber warrants and covenants that it has obtained or will obtain, as appropriate, any consents from Users or data subjects as necessary for Subscriber's use of the Software Services, to include, without limitation, (i) parental or guardian consent for Users under the age of 16, and (ii) consent to Higher Logic's collection, use, and disclosure of Subscriber Data (to the extent such data includes personal information), and (iii) Higher Logic's tracking, recordation, processing and use of Subscriber Data and other information relating to Users' use of the Software Services

b. **Use Limitations and Permissions**. The restrictions on Higher Logic's use, disclosure and commercial exploitation of Subscriber Data as set forth at Section 4(a) shall not apply to Collected Data or Derived Data, nor to Subscriber Data that has been aggregated with other Higher Logic customer data and de-identified such that it cannot be used to identify Subscriber or its Users. Nothing herein shall be construed as prohibiting Higher Logic from utilizing Collected Data and Derived Data for Higher Logic's business purposes, provided that (a) any such data will be aggregated with other Higher Logic customer data, and (b) Higher

Logic's use of such Collected Data and Derived Data will not (i) reveal or be capable of revealing the identity, whether directly or indirectly, of Subscriber to any third party or (ii) reveal or be capable of revealing the identity, whether directly or indirectly, of any User or other individual, or of revealing any specific data entered by a User or other individual into the Software Services. In no event will Collected Data or Derived Data include Subscriber Data or Subscriber Confidential Information.

c. **Security Configuration Options**. Subscriber agrees that Higher Logic shall have no obligation or liability to Subscriber for any unauthorized access to Subscriber Data or any other data security related claims arising out of or related to Subscriber's election of a configuration option, when a more secure option not selected by Subscriber was made available by Higher Logic. Subscriber certifies that any user designated by the Subscriber to have access and authority sufficient to elect configuration options is a duly authorized and competent representative of Subscriber, including to bind Subscriber for such purposes, pursuant to this Agreement. Configuration options that may enhance or decrease security features include, but are not limited to, whether to present terms of use or a privacy policy at log-in for other users of Subscriber, whether to enable an auto-log-on feature that allows any person with a link to access Subscriber information without any log-on requirement, and whether to allow a Subscriber-designated user to "impersonate" another user.

d. **Notification of Security Breach**. If either party believes that a Security Breach (as defined below) has occurred, such party must promptly notify the other party as promptly as possible without undue delay, but in any event within forty-eight (48) hours following confirmation of the breach or any shorter period as may be required by Law. Additionally, each party will reasonably assist the other party in mitigating any potential damage. As soon as reasonably practicable after any such Security Breach, Higher Logic shall conduct an investigation and, upon request, will share the results of its investigation and its remediation plan with Customer. "**Security Breach**" means (i) the loss or misuse of Subscriber Data; or (ii) the inadvertent, unauthorized, and/or unlawful processing, disclosure, access, alteration, corruption, transfer, sale or rental, destruction, or use of any Subscriber Data.

11. Limitation of Liability.

a. **INDIRECT DAMAGES**. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT WITH RESPECT TO A PARTY'S BREACH OF SECTION 9 ("CONFIDENTIAL INFORMATION"), IN NO

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EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE, LOSS OF GOODWILL OR COSTS TO PROCURE SUBSTITUTE GOODS OR SERVICES) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT OR THE SOFTWARE SERVICES OR PROFESSIONAL SERVICES, EVEN IF ADVISED BEFOREHAND OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES WERE REASONABLY FORSEEABLE.

b. **LIMIT ON CUMULATIVE LIABILITY**. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT WITH RESPECT TO (i) A PARTY'S INDEMNIFICATION OBLIGATIONS FOR THIRD PARTY CLAIMS AS SET FORTH HEREIN, (ii) RECKLESS MISCONDUCT, GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND/OR FRAUD, (iii) A BREACH OF HIGHER LOGIC'S DATA SECURITY OBLIGATIONS (WHICH ARE INSTEAD LIMITED PURSUANT TO SUBSECTION (c) BELOW, (iv) BREACH OF SECTION 9 ("CONFIDENTIAL INFORMATION"), OR (v) SUBSCRIBER'S PAYMENT OBLIGATIONS, IN NO EVENT WILL THE TOTAL CUMULATIVE LIABILITY OF A PARTY FOR ALL CLAIMS ARISING UNDER AND DURING THE ENTIRE TERM OF THIS AGREEMENT AND FOR ANY ACTION ARISING FROM OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY SUBCRIBER TO HIGHER LOGIC UNDER THIS AGREEMENT FOR THE SOFTWARE SERVICES DURING THE 12 MONTH PERIOD PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM. THE EXISTENCE OF MULTIPLE CLAIMS WILL NOT INCREASE THIS LIMIT.

c. **Data Security Breach Remediation Obligations.** The foregoing limitation in (b) above shall not apply to Higher Logic's liability for a Security Breach. In the event that any Security Breach is caused by Higher Logic's breach of its data security and/or privacy obligations under this Agreement, Higher Logic's sole liability shall be for the reasonable and documented costs incurred by Subscriber in connection with the following items: (a) out-of-pocket costs of any required forensic investigation to determine the cause of the breach, (b) providing notification of the security breach to applicable government and relevant industry self-regulatory agencies, and to individuals whose personal information may have been accessed or acquired, and (c) if and to the extent Higher Logic has approved, in writing, of the use by Subscriber and its Users of controls for the input of financial and credit information, providing credit monitoring service for one year to individuals whose personal information relating to such financial and credit information may have been accessed or acquired; provided that the foregoing shall not, in any event, exceed one million dollars ($1,000,000) in the aggregate.

Higher Logic shall perform obligations relating to the restoration of Subscriber Data following a Security Incident from the latest available back-up files.

12. Assignment.

This Agreement and the obligations of Subscriber hereunder may be assigned by Subscriber in whole with the prior written approval of Higher Logic to an organization that would have the same licensing fees as Subscriber and is not a competitor to Higher Logic. For the purposes of this Section 12 ("Assignment"), a change in the persons or entities who control fifty percent (50%) or more of the equity securities or voting interest of Subscriber shall be considered an assignment of Subscriber's rights. Higher Logic's rights and obligations, in whole or in part, under this Agreement may be assigned by Higher Logic without consent to a third party upon delivery of written notice to Subscriber of such assignment, or otherwise without consent to a successor-in-interest, whether by merger, reorganization or otherwise, or to a purchaser of all or certain assets of Higher Logic; provided that Higher Logic provides notice of such assignment as soon as practicable.

13. Survival.

In the event of any expiration or termination of this Agreement, the provisions of Section 5 ("Intellectual Property"), Section 6 ("Fees and Payment"), Section 7 ("Term and Termination"), Section 8 ("Disclaimers"), Section 9 ("Confidential Information"), Section 11 ("Limitation of Liability"), Section 13 ("Survival") and Section 14 ("General") shall survive and shall continue to bind the parties.

14. General.

a. **Governing Law and Venue**. This Agreement shall be governed in all respects by the laws of the State of Delaware as applied to contracts entered into and performed in Delaware between Delaware residents and without regard to conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The state and federal courts located in Wilmington, Delaware, shall have sole and exclusive jurisdiction over any disputes arising hereunder, and the parties hereby irrevocably consent to the sole and exclusive personal jurisdiction of such courts.

b. **Relationship of the Parties**. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

c. **Force Majeure**. Neither party shall be liable hereunder by reason of any failure or delay in

the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages, failures of ISPs, utilities or telecommunications providers (other than those providing services on behalf of Higher Logic), or any other cause which is beyond the reasonable control of such party.

d. **Waivers**. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

e. **Severability**. In the event that any provision of this Agreement shall be unenforceable or invalid under any Applicable Law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision.

f. **Section headings; Amendments**. The section headings appearing in this Agreement are inserted only as a matter of convenience. This Agreement may not be modified except by a writing signed by both parties. Any purported oral amendment to this Agreement shall have no effect whatsoever.

g. **Entire Agreement**. This Agreement, the Order Form, and any exhibit, schedule, attachment or policy hereto, completely and exclusively state the agreement of the parties regarding the subject matter hereof, and supersede and govern, all prior and contemporaneous proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter.

h. **Notices**. Any notice given to a party under or in connection with this Agreement shall be in writing in English language and shall be delivered by hand, by pre-paid first-class U.S. mail, electronic mail, or a next working day delivery service at the other party's principal place of business as designated on the applicable Order Form. Notices shall be deemed given (i) upon personal delivery to the party to be notified; (ii) when received by electronic or confirmed facsimile transmission if received during normal business hours of the recipient on a Business Day, or if not, then on the next Business Day with a copy sent via any other method of notice;

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(iii) five (5) days following deposit into the United States mail (certified mail, return receipt requested); or (iv) one (1) business day after deposit with an internationally recognized overnight courier, with written verification of receipt.

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