

Vanilla Forums ULC

Master Subscription Agreement Last Updated: October 1, 2022

This Master Subscription Agreement (“**Agreement**”), entered into by and between Vanilla Forums ULC (“**Vanilla**” or “**Service Provider**”), formed under the laws of British Columbia, and the customer identified on the signature line (“**Subscriber**”), governs the order, provision and use of the Vanilla services described on each order form executed by the parties (“**Order Form**”) which includes a hyperlink or other reference to this Agreement and/or to which this Agreement is attached, which services (a) may include (i) Vanilla’s cloud-based platform and/or (ii) other Vanilla cloud-based service offerings described on the Order Form (collectively, and together with all updates thereto, the “**Software Services**”) and (b) may include Professional Services (as defined below). From time to time, Vanilla and Subscriber may mutually agree to add modules to, and may adjust quantities and other terms set forth in, an Order Form by executing a written amendment to the Order Form or entering into a new Order Form. Each Order Form, and any and all amendments 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. Subscriber’s execution of an Order Form constitutes a binding noncancelable (except as set forth herein) agreement to subscribe for the Software Services described on the Order Form under the terms and conditions of this Agreement.

1. Access Right and Restrictions.

1.1 Software Services. Subject to the terms and conditions of this Agreement, Vanilla hereby grants Subscriber a worldwide, limited, nonexclusive, nontransferable (except as expressly set forth in Section 10.8 below), non-sublicensable (except as expressly set forth in Section 1.4.1 below) right to access and use the Software Services during the Term for legitimate and lawful purposes.

1.2 Support and Service Availability. During the Term of this Agreement, Subscriber may submit support requests to the Vanilla website at <https://vanillaforums.com/en/contact/>. Vanilla’s standard support hours are Monday through Friday from 8 a.m. to 6 p.m. Eastern Time.

1.3 Professional Services. If expressly requested by Subscriber, Vanilla may perform supplemental professional services relating to the Software Services (the “**Professional Services**”) in the form, type and manner provided in a statement of work entered into by the parties for such services (each a “**Service Description**” or a “**Statement of Work**”). All Service Descriptions or Statements of Work entered into by the parties are and shall be subject to all terms and conditions of this Agreement and are incorporated herein by reference. In the event of any conflict between the terms of this Agreement and the terms of the Order Form, Service Description or Statement of Work, the terms of the Agreement shall control unless the Order Form or Statement of Work indicates the specific provision(s) of this Agreement that it overrides.

1.4 Restrictions; Acceptable Use. The following limitations and restrictions shall apply to Subscribers use of the Software Services:

1.4.1 Subscriber shall only provide access to the Software Services to persons who are an employee, consultant or contractor of Subscriber, or a member of Subscriber’s user base approved by Subscriber (each an “**Authorized User**”). Subscriber shall be solely responsible for securing users’ acceptance to Vanilla’s Acceptable Use Policy and Anti-Spam Policy, and all activity occurring under each Authorized User’s account, including without limitation all costs, fees, liabilities or damages incurred as a result of each Authorized Users’ non-compliance with such Acceptable Use Policy and/or Anti-Spam Policy.

1.4.2 Except as expressly permitted hereunder Subscriber will not and will not permit or authorize any third party to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of any of the Software Services; (ii) modify, translate or create derivative works based on any of the Software Services; (iii) copy, rent, lease, distribute, pledge, assign or otherwise transfer or allow any lien, security interest or other encumbrance on any of the Software Services; (iv) use any of the Software Services for timesharing or service bureau purposes or otherwise for the benefit of a third party; (v) hack, manipulate, interfere with or disrupt the integrity or performance of or otherwise attempt to gain unauthorized access to any of the Software Services or their related systems, hardware or networks or any content or technology incorporated in any of the foregoing; or (vi) remove or obscure any proprietary notices or labels of Vanilla or its suppliers on any of the Software Services.

1.4.3 Subscriber shall comply and shall require its Authorized Users to comply with Vanilla's [Acceptable Use Policy](#) and [Anti-Spam Policy](#) as may be updated from time to time at Vanilla's sole discretion. Unless expressly agreed to in writing by Vanilla, Subscriber will not nor permit any Authorized User to use the Software Services to collect, transmit, provide, or otherwise process protected sensitive information about an individual deemed "sensitive" or "special category" under applicable laws, such as, but not limited to financial account numbers, insurance plan numbers, protected health or medical information, protected student information, and government-issued identifiers (e.g., Social Security numbers), (collectively, "**Sensitive Information**"). Subscriber acknowledges and agrees that, in the event of a violation of any of the foregoing restrictions or a violation that threatens to harm the Software Services, Vanilla, its subscribers or its users that is not cured within 48 hours of receipt of written notice from Vanilla, Vanilla shall have the right to suspend, restrict or terminate any account(s) associated with the restricted activity, in addition to any other remedies under applicable law or at equity.

1.5 Third-Party Products. If expressly requested by Subscriber, Subscriber may separately subscribe to third party applications, data sources and software services of third-party providers ("**Third Party Products**") through the Software Services. Subscriber acknowledges and agrees that: (i) the use of Third Party Products may require Subscriber to agree to separate terms and conditions with the third-party provider of the Third Party Products which may govern Subscriber's use of the Third Party Products and the third party provider's access to and use of Subscriber Data; and (ii) the Third Party Products are made available by the third-party provider, not Vanilla, and, accordingly, Vanilla is not responsible for providing any warranties, indemnities or technical support for such Third Party Products and is not responsible for Subscriber's or its Authorized Users' enablement, access to or use of such Third Party Products, nor for any damage or loss caused in connection with Subscriber's or its Authorized Users' use of any Third Party Products.

2. Data Rights.

2.1 Subscriber Data. As between Subscriber and Vanilla, Subscriber owns or has the rights for purposes hereunder, to use all electronic data submitted by or on behalf of Subscriber or any Authorized User to the Software Services ("**Subscriber Data**"). Subscriber hereby grants to Vanilla a non-exclusive, worldwide, royalty-free, fully paid up, sublicensable, right and license to copy, distribute, display and create derivative works of and use the Subscriber Data during the Term to perform Vanilla's obligations under this Agreement. Subject at all times to Vanilla's obligations under [Section 7](#) (Confidentiality), Subscriber also hereby grants to Vanilla a non-exclusive, world-wide, royalty-free, fully paid up, license during the term to de-identify, anonymize, process and create derivative works of Subscriber Data for the purpose of deriving anonymous statistical and usage data, and data related to the use and functionality of the Software Services, provided such data cannot be used to identify Subscriber or its Authorized Users ("**Anonymous Data**") and combining or incorporating such Anonymous Data with or into other similar data and information available, derived or obtained from other Subscribers, licensees, users, or other sources (when so combined or incorporated, referred to as "**Aggregate Data**"), for the purposes of improving the Software

Services and developing and commercializing new features, products and services (including generating statistics for marketing purposes). Subscriber represents and warrants that it has all the necessary rights and permissions to grant the licenses granted in this Section.

2.2 Data Retrieval and Deletion. Upon any termination or expiration of this Agreement for any reason Vanilla will, upon Subscriber's written request, provide a one-time export of Subscriber Data to Subscriber in Vanilla's standard machine readable format provided that Vanilla receives such request within thirty (30) days of the effective date of expiration or termination of this Agreement. After such thirty (30) day period, Vanilla will delete any Subscriber Data stored or otherwise archived in the Software Services unless Vanilla is required to retain such Subscriber Data by Applicable Laws or pursuant to a court order or request of a regulatory authority.

3. Fees and Payment.

3.1 Fees; Invoicing; Payments. Unless otherwise provided in an applicable Order Form, Vanilla shall invoice Subscriber annually in advance for any recurring amounts ("Recurring Fees") and any one time fees ("One Time Fees") payable by Subscriber pursuant to an Order Form. Subscriber shall pay all amounts owed to Vanilla (collectively, Recurring Fees and One Time Fees, the "**Fees**") within thirty (30) days of Subscriber's receipt of Vanilla's invoice, without setoff, counterclaim or deduction, except for amounts disputed in good faith by Subscriber pursuant to [Section 3.2](#) below. All Fees are payable in United States Dollars and, except as expressly otherwise provided herein, are nonrefundable. If the Initial Term is for more than one year, for each year of the Initial Term, Vanilla may increase the Recurring Fees by up to the percentage specified in the Order Form or, if not specified in the Order Form, by five percent (5%) over the prior year's Recurring Fees. Sales, promotions, credits and other special discounted pricing offers are temporary and any such discounted pricing offers will not apply to any Renewal Term. In addition, Vanilla reserves the right to increase the Fees payable for a Renewal Term upon no less than seventy-five (75) days written notice (which may be provided by email) to Subscriber.

3.2 Disputes; Suspension Right. Subscriber shall notify Vanilla in writing of any disputed fees within fifteen (15) days of Subscriber's receipt of an invoice, setting forth in reasonable details grounds for disputing the invoice. Vanilla 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 fifteen (15) 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 fifteen (15) day period. Subscriber understands and agrees that its failure to pay undisputed Fees when due shall give Vanilla the right to suspend access to the Software Services until such nonpayment is cured and may be treated as a material breach of this Agreement pursuant to the terms of [Section 4](#) ("Term and Termination").

3.3 Taxes. If Vanilla 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 Vanilla under this Agreement, the appropriate amount shall be invoiced to and paid by Subscriber, unless Subscriber provides Vanilla with a valid tax exemption certificate authorized by the appropriate taxing authority and Subscriber agrees to pay, and to indemnify and hold Vanilla harmless from, any such Taxes excluding taxes based on Vanilla's net income, employees or property.

4. Term and Termination.

4.1 Term. The initial term of this Agreement shall commence upon the signature date of the Order Form which includes a hyperlink or other reference to this Agreement and/or to which this Agreement is attached and, unless earlier terminated as provided herein, 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.

4.2 Termination or Suspension for Breach. Either party may terminate an Order Form or this Agreement upon written notice to the other party if the other party materially breaches the Order Form or 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 under an Order Form that has not been disputed by Subscriber pursuant to Section 3.2 or cured by the date that is fifteen (15) business days past the due date therefor shall be deemed to constitute a material breach. Vanilla 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 Vanilla’s right to terminate an Order Form or this Agreement for material breach in accordance with the terms hereof.

4.3 Effect of Termination. Upon expiration or termination of this Agreement, all Order Forms shall immediately terminate and Subscriber and its Authorized Users shall cease all use of the Software Services. Except as set forth herein, 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 undisputed Fees. Section 2 (“Data Rights”), Section 3 (“Fees and Payment”), Section 4.3 (“Effect of Termination”), Section 5.2 (“Disclaimers”), Section 6 (“Intellectual Property; Indemnification”), Section 7 (“Confidential Information”), Section 9 (“Limitation of Liability”), and Section 10 (“General”) shall survive any termination or expiration of this Agreement.

5. Warranty.

5.1 Software Services Warranty. Vanilla 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, Vanilla shall, in its sole discretion, either (i) use commercially reasonable efforts to remedy the material nonconformity within a commercially reasonable period of time or (ii) in the event that Vanilla is unable to remedy the material non-conformity, either party may terminate this Agreement and upon Subscriber’s written request provide a pro-rata refund of any pre-paid and unused Recurring Fees for the remaining Term of any terminated subscription to Software Services. The Vanilla warranties set forth above shall not apply to any nonconformities resulting from Subscriber’s or its Authorized Users’ acts or omissions or noncompliance with this Agreement or resulting from any hardware, software, data, materials or other products or services not developed or provided by Vanilla.

5.2 Disclaimers. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SOFTWARE SERVICES ARE PROVIDED ON AN “AS-IS” BASIS AND VANILLA DISCLAIMS ANY AND ALL WARRANTIES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. ALL OTHER EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. VANILLA EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. VANILLA MAKES NO WARRANTIES AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SOFTWARE SERVICES OR AGAINST INFRINGEMENT, OR OPERATE IN AN ERROR FREE OR UNINTERRUPTED MANNER. NEITHER PARTY WILL HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF THE OTHER PARTY TO ANY THIRD PARTY.

6. Intellectual Property; Indemnification.

6.1 Software Services IP. Subscriber acknowledges and agrees that, as between the parties, Vanilla retains all rights, title and interest in and to the Software Services, all copies or parts thereof (by whomever produced) and all intellectual property rights therein, and grants no, and reserves any and all, rights other than the rights expressly granted to Subscriber under this Agreement with respect to the Software Services. Subscriber may, at its sole discretion, from time to time provide suggestions, comments for enhancements or functionality or other feedback (“**Feedback**”) to Vanilla with respect to the Software Services. Subject to Vanilla’s obligations under Section 7 (Confidentiality), Subscriber hereby grants Vanilla a royalty-free, fully paid-up, worldwide, transferable, sublicensable, irrevocable, perpetual license to (a) copy, distribute, transmit, display, perform, and create derivative works of the Feedback in whole or in part; and (b) use the Feedback in whole or in part, including without limitation, the right to develop, manufacture, have manufactured, market, promote, sell, have sold, offer for sale, have offered for sale, import, have imported, rent, provide and/or lease products or services which practice or embody, or are configured for use in practicing, the Feedback in whole or in part.

6.2 Indemnification By Vanilla. Vanilla will defend hold harmless and indemnify (at Vanilla’s expense) Subscriber and the officers, directors, agents, and employees of Subscriber (“**Subscriber Parties**”) from settlement amounts and damages, liabilities, penalties, costs and expenses (“**Liabilities**”) that are payable to any third party or incurred by the Subscriber Parties (including reasonable attorneys’ fees) arising from, directly or indirectly, any claim, demand or allegation by a third party that arises out of any copyright infringement claim, trade secret misappropriation claim, or claim of infringement of a patent that involves, relates to or concerns the Software Services (except for claims for which Vanilla is entitled to indemnification under Section 6.3, in which case Vanilla will have no obligations with respect to such claim). Vanilla will have no liability or obligation under this Section 6.2 with respect to any Liability if such Liability is caused in whole or in part by (x) modification of the Software Services by any party other than Vanilla without Vanilla’s express consent; (y) the combination, operation, or use of the Software Services with other product(s), data or services where the Software Services would not by itself be infringing; or (z) use of the Software Services in violation of the terms of this Agreement. If the use of the Software Services by Subscriber has become, or in Vanilla’s opinion is likely to become, the subject of any claim of infringement, Vanilla may at its option and expense (a) procure for Subscriber the right to continue using the Software Services as set forth hereunder; (b) replace or modify the Software Services to make it non-infringing so long as the Software Services has at least equivalent functionality; (c) substitute an equivalent for the Software Services or (d) if options (a)-(c) are not reasonably practicable, terminate this Agreement and upon Subscriber’s written request, provide a pro-rata refund of any pre-paid and unused Recurring Fees for the remaining Term of any terminated subscription to the Software Services. This Section 6.2 states Vanilla’s entire obligation and Subscriber’s sole remedies in connection with any claim regarding the intellectual property rights of any third party on Subscriber’s behalf.

6.3 Indemnification By Subscriber. Subscriber shall defend hold harmless and indemnify (at Subscriber’s expense) Vanilla and its officers, directors, agents, and employees from any third party claims, demands, suits or proceedings brought against Vanilla arising out of or related to (i) Subscriber’s breach of Section 1.4, or (ii) Vanilla’s compliance with any designs, specifications, configuration options or instructions provided by Subscriber or a third party on Subscriber’s behalf. Subscriber shall have the sole and exclusive authority to defend and/or settle any such claim and pay all damages (including reasonable attorneys’ fees) that are finally awarded by a court of competent jurisdiction or agreed to by Subscriber in settlement of such claims.

6.4 Indemnification Process. If either party becomes aware of any matter for which it believes it should be indemnified or defended under Section 6.2 or Section 6.3, as applicable, involving any claim, action, suit, investigation, arbitration or other proceeding against the such party by any third party (each an “**Action**”), such party shall give the other party prompt written notice of such Action, and will cooperate, at the expense of the indemnifying party, with the indemnifying party and its counsel in the defense and will have the right to participate fully, at its own expense, in the defense of such Action with counsel of its own choosing. Any compromise or settlement of an Action will require the prior written consent of both parties hereunder, such consent not to be unreasonably withheld or delayed.

7. Confidential Information.

7.1 Confidentiality. As used herein, “**Confidential Information**” means, subject to the exceptions set forth in the following sentence, any information or data, regardless of whether it is in tangible form, disclosed by either party (the “**Disclosing Party**”) that the Disclosing Party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) days of disclosure to the other party (the “**Receiving Party**”); provided, however, that a Disclosing Party’s business plans, strategies, technology, research and development, current and prospective customers, billing records, and products or services will be deemed Confidential Information of the Disclosing Party even if not so marked or identified. Vanilla’s Confidential Information includes, without limitation, the Software Services and the terms of this Agreement. Information will not be deemed “Confidential Information” if such information: (a) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; or (c) was or becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; or (d) is independently developed by the Receiving Party without the use of or reliance upon any Confidential Information of the other party. Each party acknowledges that the Confidential Information may constitute valuable trade secrets and proprietary information of a party, and each party agrees that it will use the Confidential Information of the other party solely in accordance with the provisions of this Agreement and it will not disclose, or permit to be disclosed, the same directly or indirectly, to any third party without the other party’s prior written consent, except as otherwise permitted hereunder. Each party will use reasonable measures to protect the confidentiality and value of the other party’s Confidential Information. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Section, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement. Upon the termination of this Agreement, each Receiving Party agrees to promptly return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party that is in the possession of the Receiving Party and to certify the return or destruction of all such Confidential Information and embodiments thereof.

8. Data Security and Privacy.

8.1 Data Security. Vanilla shall maintain appropriate technical and organizational measures to protect Subscriber Data from accidental or unlawful destruction, loss, alteration, unauthorized disclosure (“**Vanilla Data Security Controls**”). To the extent that Vanilla processes any Personal Data (as defined in the Vanilla Data Processing Addendum) as part of Subscriber Data in the provision of the Software Services hereunder, the terms of the Vanilla Data Processing Addendum set forth at <https://www.higherlogic.com/vanilla-dpa> which are hereby incorporated herein by reference, shall apply.

9. Limitation of Liability.

9.1 INDIRECT DAMAGES. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, LOST OR DAMAGED DATA, LOST PROFITS OR LOST REVENUE, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY THEREOF.

9.2 LIMIT ON CUMULATIVE LIABILITY. EXCEPT AS EXPRESSLY PROVIDED FOR IN SECTION 9.3 BELOW AND SUBSCRIBER’S BREACH OF SECTION 1.4 ABOVE, NEITHER PARTY’S

LIABILITY FOR ALL CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE AGGREGATE FEES PAID BY SUBSCRIBER TO VANILLA UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

9.3 Exceptions.

9.3.1 Data Security Breach Remediation Obligations. The limitation set forth in Section 9.2 shall not apply to Vanilla's liability for a Subscriber Data Breach caused by Vanilla and/or its Sub-processors (as defined under the Data Processing Addendum), and instead Vanilla's sole liability shall be to reimburse Subscriber for the reasonable and documented out of pocket costs incurred by Subscriber in connection with the following items: (a) conducting any required forensic investigation to determine the cause of the Subscriber Data Breach, (b) providing notification of the Subscriber Data Breach to applicable government and relevant industry self-regulatory agencies, and to individuals whose Personal Data may have been accessed or acquired, and (c) if and to the extent Vanilla has approved, in writing, of the use by Subscriber and its Authorized Users of controls for the input of financial and credit information, providing credit monitoring service for one year to individuals whose Personal Data relating to such financial and credit information may have been accessed or acquired through the Subscriber Data Breach, which (a) – (c) collectively shall not exceed the greater of (x) two times the annual Recurring Fees paid by Subscriber for the Software Services affected by the Subscriber Data Breach in the twelve months immediately preceding the date of Subscriber Data Breach and (y) \$100,000 in the aggregate. This limitation is cumulative and not per incident. Notwithstanding the proceeding, Vanilla shall have no liability for any damages or costs that would not have occurred but for Subscriber's breach of Section 1.4.3. The term "**Subscriber Data Breach**" as used in this Section 9.3.1 means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Subscriber Data, including Personal Data, transmitted, stored or otherwise processed by or on behalf of Vanilla and/or its Sub-processors on behalf of Subscriber in connection with the Software Services.

9.3.2 General. The limitation set forth in Section 9.2 shall not apply to either party's liability resulting from (i) its gross negligence or willful misconduct, (ii) a party's breach of its obligations under Section 7 (Confidentiality), or (iii) claims arising pursuant to a party's indemnification obligations under Section 6 (Indemnification).

9.4 EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THEY HAVE FAILED OF THEIR ESSENTIAL PURPOSE. ANY CLAIMS FOR DAMAGES UNDER THIS AGREEMENT SHALL BE BROUGHT NO LATER THAN TWO (2) YEARS FROM THE DATE THE PARTY BRINGING SUCH CLAIM KNEW OR SHOULD HAVE KNOWN OF FACTS THAT GAVE RISE TO SUCH CLAIM.

10. General.

10.1 Governing Law and Venue. This Agreement shall be governed in all respects by the laws of the State of Delaware, excluding its 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 the State of 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. Each party waives any objection (on the grounds of lack of jurisdiction, forum non conveniens or otherwise) to the exercise of such jurisdiction over it by any such courts.

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

10.3 Force Majeure. Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service, in whole or in part, as a result of a cause beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God, acts of war, epidemics, fire, communication line failures, power failures, earthquakes, floods, blizzard, or other natural disasters (but excluding failure caused by a party's financial condition, non-payment of fees due, or any internal labor problems (including strikes, lockouts, work stoppages or slowdowns, or the threat thereof)) (a "**Force Majeure Event**"). Delays in performing obligations due to a Force Majeure Event will automatically extend the deadline for performing such obligations for a period equal to the duration of such Force Majeure Event. Except as otherwise agreed upon by the parties in writing, in the event such non-performance continues for a period of thirty (30) days or more, either party may terminate this Agreement by giving written notice thereof to the other party. Upon the occurrence of any Force Majeure Event, the affected party will give the other party written notice thereof as soon as reasonably practicable of its failure of performance, describing the cause and effect of such failure, and the anticipated duration of its inability to perform.

10.4 Waiver; Severability. 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. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

10.5 Entire Agreement. This Agreement, the Order Form, Service Descriptions, and any Statements of Work, exhibit, schedule, attachment or policy hereto, completely and exclusively state the agreement of the parties regarding the subject matter hereof, and supersedes and replaces, all prior and contemporaneous proposals, agreements, and other communications between the parties, oral or written, regarding such subject matter. 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. The terms on any purchase order or similar document submitted by Subscriber to Vanilla will have no effect and are hereby rejected. Subscriber agrees that Subscriber is not entering into this Agreement or any Order Form contingent on the provision of any future functionality relating in any way to the Software Services and no statement or other information made or provided orally or otherwise shall be binding unless specifically set forth in this Agreement.

10.6 Notices. All notices to Subscriber under this Agreement shall be in writing and sent to the Subscriber's email address as set forth in the most recent Order Form and will be deemed to have been duly given when sent. All notices to Vanilla under this Agreement shall be in writing and sent to legalnotice@higherlogic.com and will be deemed to have been duly given when sent.

10.7 Export. Subscriber may not provide access to the Software Services to any person or entity that is (a) identified on the Specially Designated Nationals List or Foreign Sanctions Evaders List of the Office of Foreign Assets Control, U.S. Department of the Treasury, as amended from time to time; (b) located in Cuba, Iran, North Korea, Sudan, Syria, or any other country that is subject to U.S. economic sanctions prohibiting such access; or (c) otherwise unauthorized to have such access under any law or regulation of the United States or any non-U.S. authority of competent jurisdiction.

10.8 Assignment. Neither party may assign this Agreement without the other party's prior written consent; provided however, that either Party may assign this Agreement to an acquirer of or successor to all or substantially all of its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise, and in the event an assignment by Subscriber results in a material increase in the

volume of Authorized Users and/or data processed by the Software Services, the parties agree that Vanilla may increase the Fees set forth herein in a reasonable manner that is representative of such increase in usage. Any assignment or attempted assignment by either party otherwise than in accordance with this Section 10.8 will be null and void. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and a party does not have any authority of any kind to bind the other party in any respect whatsoever.

10.9 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party person or entity any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.