

## PROFESSIONAL SERVICES ADDENDUM TO ONLINE LICENSE AGREEMENT

**This Professional Services Addendum to Online License Agreement** (this “**Addendum**” or “**PSA**”), entered into by and between Higher Logic, LLC (“**Higher Logic**”), a Delaware limited liability company, and the customer identified on the Order Form to which this Addendum is attached, supplements and appends the terms of such Order Form. The terms of this Addendum shall be deemed incorporated into and made a part of the terms of the Online License Agreement, including its exhibits and attachments (the “**License Agreement**”), to which the Order Form is subject. Capitalized terms used but not defined herein shall have the same meaning such terms are given in the License Agreement.

### **1. Modifications to License Agreement.**

#### **1.1 Defined Terms.**

“Deliverables” means any Materials that are originated and prepared for Subscriber by Higher Logic (either independently or in concert with Subscriber or third parties) and delivered to Subscriber during the course of Higher Logic’s performance of the Services under this Addendum, all as may be specified in an Order Form.

“Higher Logic Personnel” means all persons provided by Higher Logic to perform the Professional Services, to include employees of Higher Logic and subcontractors engaged by Higher Logic to perform work as part of Professional Services

“Materials” means work product and any other materials, including without limitation, reports, documents, templates, studies, software programs in both source code and object code, specifications, business methods, tools, methodologies, processes, techniques, solution construction aids, analytical frameworks, algorithms, know-how, processes, products, documentation, abstracts and summaries thereof.

“Personal Data” or “PII” means any and all individually identifying information related to former, current or prospective employees, consultants, contingent workers, independent contractors or retirees of Subscriber that is accessed, disclosed, provided, obtained, created, generated, scanned, entered, collected or processed in connection with the Professional Services.

“Professional Services” means (i) those integration, implementation, support and other professional services specified in one or more Order Forms, to include but not be limited to Higher Logic Community Management Services and New Community Manager Onboarding Services; and (ii) those data conversion or migration services specified in an Order Form; and (iii) any additional services, functions or responsibilities as more specifically described in an Order Form.

“Subscriber Data” shall have the meaning ascribed to at Section 4 of the License Agreement, and, for purposes of this Addendum, shall include data made available by Subscriber to Higher Logic in connection with the delivery of Professional Services by Higher Logic.

“Order Form” means one or more Order Forms or Statement of Works executed by Subscriber and Higher Logic, which include: (i) a description of the Professional Services and Deliverables to be provided; (ii) a schedule for performance; (iii) the cost or other billing rate applicable to the Professional Services as well

as the billing or payment schedule (including applicable milestones); and (v) such other terms as may be mutually agreed to by the parties.

“Work Product” means any and all work product; literary works; pictorial, graphic works, or audio visual works; and all other works of whatever nature, any and all copies, originated and prepared by or on behalf of Higher Logic for Subscriber as specified in an Order Form, including, without limitation, the Deliverables, all computer programs, configurations, and all writings, designs and drawings incidental thereto.

**1.2 Order of Precedence.** With respect to Professional Services, in the event of a conflict between the terms of this Addendum or any Order Form and the License Agreement, the following order of precedence shall control: (1) the Order Form, (2) this PSA, and (3) the License Agreement.

## **2. Professional Services to be provided by Higher Logic.**

**2.1 Scope of Services.** Higher Logic shall perform the Professional Services in the form, type and manner provided in the applicable Order Form. Higher Logic and Subscriber commit to providing adequate resources and to adhering to timelines as set forth in an applicable Order Form. Higher Logics’ failure to meet any commitment in an Order Form shall be excused to the extent that such commitment is dependent on Subscriber’s fulfillment of, and Subscriber fails to timely perform, its own commitment arising under such Order Form or based upon Section 14(c) (Force Majeure) of the License Agreement. Subscriber acknowledges that the Professional Services are standardized activities performed by Higher Logic Personnel working from pre-designed templates and guidance and that custom approaches based on unique or specialized Subscriber requirements may not be available as part of the Professional Services under this Agreement. The Professional Services constitute professional services and do not constitute Software Services.

**2.2 Cooperation.** Each party will perform its respective and applicable responsibilities and obligations specified in an Order Form. Subscriber acknowledges that the successful performance of the Professional Services depends upon the full and timely collaboration of Subscriber. Subscriber agrees that its failure to provide such cooperation may result in Higher Logic’s inability to perform the Professional Services.

**2.3 Change Orders.** From time to time, Higher Logic and Subscriber may be required to mutually agree to adjust the Professional Services and any description of the work based upon newly revealed Subscriber requirements or technical developments arising in connection with the preparation or performance of the Professional Services, or in connection with a request by a party. Such changes and deviations to the scope of the Professional Services will not require formal amendment to this Addendum or the Agreement, unless material. Upon Subscriber’s request, such changes, and the associated fees for additional Professional Services to be provided, if any, will be described in a document (a “Change Order”). A completed Change Order includes the requested change, the impact on the current engagement under the applicable Order Form, and the estimated resources and time to complete the Professional Services for the work described in the Change Order. Higher Logic will submit the Change Order to Subscriber for review and approval.

**3. Fees and Expenses.** Subscriber shall pay Higher Logic Professional Services Fees at the rates and by the due dates set forth in the applicable Order Form in accordance with the terms and conditions set forth at Section 6 of the License Agreement. Subscriber shall reimburse Higher Logic for all reasonable and necessary pre-approved travel and living expenses incurred by Higher Logic in the performance of the Professional

Services under this Addendum. An email from the Subscriber Order Form contact is an acceptable form of approval for travel and expenses.

**4. Testing and Acceptance.** The parties shall agree upon procedures for the testing by Higher Logic of Deliverables, upon their completion and in cooperation with Subscriber, and, to the extent applicable, for Subscriber's acceptance of such Deliverables.

**5. Subcontractors.**

**5.1** Higher Logic may use subcontractors to perform Professional Services. Higher Logic will disclose to Customer any subcontractors used to provide Professional Services, excluding those staff augmentation subcontractors who provide personnel to staff functions using Higher Logic's tools and processes and who remain subject to Higher Logic's supervision. As of the effective date, there are no subcontractors that will be used to provide Professional Services other than staff augmentation subcontractors.

**5.2** Any subcontracting hereunder shall not relieve Higher Logic of its responsibility for the performance of all its obligations under the Agreement or for liability for conformance to an Order Form. In all cases where Subscriber authorizes work or services to be performed by any third party on a subcontract basis, Higher Logic shall (i) be responsible for ensuring that the subcontractor (a) comply with the terms and conditions of this Agreement and the applicable Order Form to the extent applicable to the Services performed by such subcontractor; (b) acknowledge and agree that it may look only to Higher Logic for payment for labor and materials provided in connection with such Services; and (ii) remain liable for all of the acts and omissions of any authorized subcontractor as if the same were performed by Higher Logic. Higher Logic shall be responsible for all payments due to its subcontractors.

**6. Ownership.**

**6.1 Higher Logic Ownership.** Unless otherwise stated in an applicable Order Form, all right, title and interest to all recommendations, ideas, techniques, know-how, designs, programs, development tools, processes, integrations, enhancements, and other technical information developed by Higher Logic in the course of performing Professional Services, or co-developed by the parties hereunder, including all trade secrets, copyrights and other Intellectual Property Rights pertaining thereto (together the "Higher Logic Intellectual Property") vests in Higher Logic. Nothing contained in this Addendum shall be construed as transferring any such rights to Subscriber or any third party except as expressly set forth herein.

**6.2 License to the Higher Logic Intellectual Property.** Subject to Section 6.1 above, Higher Logic grants to Subscriber a royalty-free, nontransferable and non-assignable (except as permitted under Section 12 (Assignment) of the License Agreement) term license to access and to use the Higher Logic intellectual property that Higher Logic incorporates into a Deliverable provided to Subscriber hereunder. Subscriber may only use the Deliverables in connection with its authorized use of the Higher Logic Service, as such is defined pursuant to the License Agreement and only during the Term set forth therein.

**7. Processing and Security of Personal Data.**

**7.1 Data Security.** Section 10 of the License Agreement sets forth the controls that Higher Logic has in place to protect Subscriber Data that Subscriber provides to Higher Logic.

**7.2 Access to Subscriber Data.** Subscriber acknowledges that Higher Logic (including Higher Logic subcontractors) may access, copy and use Subscriber Data; provided that such access, copying and

use shall be limited to the purpose of providing Professional Services under this Agreement during the implementation, installation, migration and data conversion phases. Subscriber acknowledges that, in the process of migrating Subscriber Data from the Subscriber's systems to the Higher Logic platform, Higher Logic will make one or more copies of the Subscriber Data. Higher Logic shall not make unnecessary copies of Subscriber Data. After the Professional Services are complete, or if terminated before completion, Higher Logic shall delete all copies of Subscriber Data stored by it in the process of performing Professional Services, which data to be deleted expressly excludes Subscriber Data accessible to Subscriber following the migration of data pursuant to the Professional Services and Subscriber's use of the Software Services.

**7.3 Restrictions on Use and Disclosure of Subscriber Data.** Higher Logic will not use Subscriber Data or derive information from it for any advertising or similar commercial purposes. Subscriber consents to Higher Logic's access to and use of Subscriber Data to facilitate the subject matter of this Agreement and has obtained any required consents under applicable privacy and data protection laws. Higher Logic may use any technical information it derives from providing Professional Services for the purpose of problem resolution, troubleshooting, product functionality enhancements and fixes, and for its knowledge base, so long as such information is not Subscriber's Confidential information. In the course of performing Professional Services hereunder, Higher Logic may disclose Subscriber Data only to its consultants or subcontractors, and then only on a need-to-know basis to further the purposes of the Agreement.

## **8. Warranties & Disclaimers.**

**8.1 Warranties.** Each party warrants that it has the authority to enter into this Addendum and, in connection with its performance of this Addendum shall comply with all Laws applicable to it related to data privacy, international communications and the transmission of technical or personal data. Higher Logic warrants that (i) it shall perform the obligations described in each Order Form in a professional and workmanlike manner; and (ii) Higher Logic will not knowingly introduce any malicious code into the Deliverable(s).

**8.2 Warranty Remedies.** In the event of a breach of the foregoing warranty set forth in Section 8.1, Higher Logic shall correct the non-conforming Professional Service or Deliverable at no additional charge to the Subscriber. To receive warranty remedies, Subscriber must promptly report deficiencies in writing to Higher Logic, but no later than sixty (60) days after the first date the deficiency is identified by Subscriber. The remedies set forth in this subsection shall be Subscriber's sole remedy and Higher Logic's sole liability for breach of these warranties, unless the breach of warranty constitutes a material breach of this Addendum and Subscriber elects to terminate this Addendum in accordance with Section 9.4 (Termination for Cause) below.

**8.3 DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HIGHER LOGIC MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PROFESSIONAL SERVICES AND/OR RELATED DELIVERABLES. HIGHER LOGIC DOES NOT WARRANT THAT THE PROFESSIONAL SERVICES AND/OR DELIVERABLES WILL BE ERROR FREE OR UNINTERRUPTED. THE LIMITED WARRANTIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED TO SUBSCRIBER IN CONNECTION WITH THE PROVISION OF THE PROFESSIONAL SERVICES AND DELIVERABLES.

## 9. Term & Termination.

**9.1 Term.** This PSA will remain in effect throughout the Term of the License Agreement and is coterminous with the License Agreement unless otherwise terminated in accordance with this section. Termination or breach of this PSA or an Order Form hereunder by either party for any reason shall not terminate nor give that party the right to terminate the License Agreement or any Order Forms (except the foregoing shall not constitute a waiver of any right to terminate the License Agreement in accordance with the terms thereof). The term of a Order Form shall commence on the effective date thereof and terminate in accordance with the terms thereof.

**9.2 Termination by Subscriber.** Except as set forth in a Order Form, Subscriber may terminate this Addendum or any Order Form at any time by giving Higher Logic fifteen (15) days prior written notice of termination.

**9.3 Termination by Higher Logic.** Except as set forth in a Order Form, Higher Logic may terminate this Addendum or any Order Form by giving Subscriber fifteen (15) days prior written notice in the event: (i) Subscriber repeatedly fails to perform its obligations under this Addendum or a Order Form resulting in the inability of Higher Logic to meet its obligations and time frame commitments, or (ii) it is determined that the information provided by Subscriber, or lack thereof, to Higher Logic during the discovery stage is materially inaccurate.

**9.4 Termination for Cause.** Either party may terminate this Addendum or any Order Form for cause: (i) upon thirty (30) days prior written notice to the other party of a material breach by the other party if such breach remains uncured at the expiration of such notice period; or (ii) immediately in the event the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**9.5 Effect of Termination.** In the event that this Addendum or a Order Form is terminated, Higher Logic shall immediately cease performance of all Professional Services governed thereunder and Subscriber shall pay Higher Logic within thirty (30) days after the date of termination for all applicable Professional Services performed by Higher Logic and travel & living expenses incurred up to the cessation of such Professional Services. Upon termination of this PSA, all Order Forms issued hereunder shall terminate and have no further force or effect. All provisions of this PSA shall survive termination or expiration of the License Agreement and/or this PSA, except for (i) Higher Logic's obligations to provide Professional Services, (ii) Subscriber's rights and licenses to use any Deliverables and any related Intellectual Property Rights, (iii) the Order Forms that do not expressly provide for survival beyond the term of the License Agreement, and (iv) any payment obligation of Subscriber arising hereunder or under a Order Form after the effective date of termination.

## 10. Indemnification.

**10.1** The terms and conditions contained in Section 5.b of the License Agreement (Indemnification for Infringement) are hereby incorporated by reference, and notwithstanding anything to the contrary, shall apply to the Professional Services and Deliverables.

**10.2** Higher Logic will defend Subscriber against any third-party claims that arise from Higher Logic's violation of its obligations under (1) this Addendum, or (2) laws that are (a) applicable to Higher Logic as the provider of the Professional Services; and (b) are applicable in jurisdictions where the Professional Services have been made commercially available as of the date of a given third party claim.

However, Higher Logic is not responsible for defending claims to the extent they arise from data protection or privacy laws applicable to Subscriber or its industry and not generally applicable to Higher Logic in its provision of the Professional Services.

## **11. Limitation of Liability.**

**11.1** The total liability of each party, for all claims arising in connection with the Professional Services is limited to direct damages in an amount not to exceed the greater of (a) the amount paid and payable by Subscriber hereunder and under the License Agreement at the time the cause of action arose or (b) the annual value of outstanding Order Forms under the License Agreement and this Addendum for the year in which the cause of action arose. This limitation applies regardless of whether the asserted liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties or any other legal theory.

**11.2** Neither party nor their Affiliates or contractors will be liable for any indirect, consequential, special or incidental damages, or damages for lost profits, revenues, business interruption, or loss of business information in connection with this Addendum, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable.

**11.3** The limits and exclusions in this subsection do not apply to Higher Logic's obligations under Section 10 (Indemnification), or either party's liability for violation of its confidentiality obligations, except obligations related to Subscriber Data.