

## **HIGHER LOGIC**

### **DATA PROCESSING ADDENDUM**

This Data Processing Addendum (“DPA”) forms part of the Master Subscription Agreement (the “Agreement”) between Higher Logic, LLC (“Higher Logic”) and Subscriber for the purchase of Software Services (as defined in the Agreement) from Higher Logic (hereinafter referred to as the “Service”), and reflects the parties’ agreement with regard to the Processing of Personal Data. Subscriber enters into this DPA on behalf of itself and, to the extent required under applicable Data Protection Laws and Regulations, in the name and on behalf of its Authorized Affiliates, if and to the extent Higher Logic Processes Personal Data for which such Authorized Affiliates qualify as the Controller. All capitalized terms not defined herein shall have the meaning set forth in the Agreement. In providing the Service to Subscriber pursuant to the Agreement, Higher Logic may Process Personal Data on behalf of Subscriber, and the parties agree to comply with the following provisions with respect to any Personal Data.

For purposes of this DPA, Subscriber and Higher Logic agree that Subscriber is the Controller of Personal Data and Higher Logic is the Processor of such data, except when Subscriber acts as a Processor of Personal Data, in which case Higher Logic is a Sub-processor. This DPA applies to the Processing of Personal Data by Higher Logic on behalf of Subscriber. This DPA does not limit or reduce any data protection commitments Higher Logic makes to Subscriber in the Master Subscription Agreement or other agreement between Higher Logic and Subscriber. This DPA does not apply where Higher Logic is a Controller of Personal Data.

#### **APPLICATION OF THIS DPA**

If the Subscriber entity signing this DPA is a party to the Agreement, then this DPA is an addendum to, and forms part of, the Agreement. In such case, the Higher Logic entity that is party to the Agreement is party to this DPA.

If the Subscriber entity signing this DPA has executed an Order Form with Higher Logic or its Affiliate pursuant to the Agreement, but is not itself a party to the Agreement, then this DPA is an addendum to that Order Form and applicable renewal Order Forms, and the Higher Logic entity that is a party to such Order Form is a party to this DPA.

If the Subscriber entity signing this DPA is neither a party to an Order Form nor the Agreement, then this DPA is not valid and therefore is not legally binding. Such entity should request that the Subscriber entity who is a party to the Agreement executes this DPA.

This DPA shall not replace any comparable or additional rights relating to Processing of Subscriber Data contained in the Agreement.

#### **DPA DEFINITIONS**

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the Subscriber entity signing this Agreement, or with Higher Logic, as the case may be.

“Authorized Affiliate” means any of Subscriber's Affiliate(s) which (a) is subject to the data protection laws and regulations of the European Union, the European Economic Area and/or their member states, Switzerland and/or the United Kingdom, and (b) is permitted to use the Service pursuant to the Agreement between Subscriber and Higher Logic, but has not signed its own Order Form with Higher Logic and is not a "Subscriber" as defined under the Agreement.

"Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Controller” means the entity which determines the purposes and means of the Processing of Personal Data.

“Data Protection Laws and Regulations” means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, applicable to the Processing of Personal Data under the Agreement.

“Data Subject” means the identified or identifiable person to whom Personal Data relates.

“GDPR” means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

“Higher Logic” means the Higher Logic entity which is a party to this DPA, as specified in the section “Application of this DPA” above, being Higher Logic, LLC, a limited liability company formed under the laws of Delaware, or an Affiliate of Higher Logic, as applicable.

“Higher Logic Group” means Higher Logic and its Affiliates engaged in the Processing of Personal Data.

“Personal Data” means any information relating to (i) an identified or identifiable natural person and, (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable Data Protection Laws and Regulations), where for each of (i) or (ii), such data is Subscriber Data.

“Processing” (including its root word, “Process”) means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use,

disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

“Processor” means the entity which Processes Personal Data on behalf of the Controller.

“Subscriber Data” means all electronic data submitted by or on behalf of Subscriber, or an Authorized Affiliate, to the Service.

“Standard Contractual Clauses” means the agreement executed by and between Subscriber and Higher Logic and included herein, pursuant to the European Commission’s decision (C(2010)593) of 5 February 2010 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

“Sub-processor” means any Processor engaged by Higher Logic or a member of the Higher Logic Group.

“Supervisory Authority” means an independent public authority which is established by an EU Member State pursuant to the GDPR.

## **DPA TERMS**

Higher Logic and the signatory below (“Subscriber”) hereby enter into this DPA as of the last date of execution by a party.

1. **Provision of the Service.** Higher Logic provides the Service to Subscriber under the Agreement. In connection with the Service, the parties anticipate that Higher Logic may Process Subscriber Data that contains Personal Data relating to Data Subjects.
2. **Subscriber Responsibilities.** Subscriber shall, in its use of the Service, Process Personal Data in accordance with the requirements of Data Protection Laws and Regulations. For the avoidance of doubt, Subscriber’s instructions for the Processing of Personal Data shall comply with Data Protection Laws and Regulations. Subscriber shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Subscriber acquired Personal Data. Subscriber instructs Higher Logic (and authorizes Higher Logic to instruct each Subprocessor) to: (a) Process Subscriber Data, which may include Personal Data, and (b) in particular, transfer Subscriber Data and Personal Data to any country or territory, as reasonably necessary for the provision of the Services and consistent with the Agreement. Subscriber warrants and represents that it is and will at all relevant times remain duly and effectively authorized to give the instruction set out in this Section 2 on behalf of each relevant Authorized Affiliate.
3. **Processing Purposes.** Higher Logic shall keep Personal Data confidential and shall only Process Personal Data on behalf of and in accordance with Subscriber’s documented

instructions for the following purposes: (i) Processing in accordance with the Agreement and applicable Order Form(s); (ii) Processing initiated by Users in their use of the Service; and (iii) Processing to comply with other documented, reasonable instructions provided by Subscriber (for example, via email) where such instructions are consistent with the terms of the Agreement. Higher Logic shall not be required to comply with or observe Subscriber's instructions if such instructions would violate the GDPR or other EU law or EU member state data protection provisions.

4. **Scope of Processing.** The subject-matter of Processing of Personal Data by Higher Logic is the performance of the Service pursuant to the Agreement. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this DPA are as set forth in the Agreement.
5. **Data Subject Requests.** To the extent legally permitted, Higher Logic shall promptly notify Subscriber if Higher Logic receives a request from a Data Subject to exercise the Data Subject's right of access, right to rectification, restriction of Processing, erasure ("right to be forgotten"), data portability, object to the Processing, or its right not to be subject to an automated individual decision making ("Data Subject Request"). Factoring into account the nature of the Processing, Higher Logic shall assist Subscriber by appropriate organizational and technical measures, insofar as this is possible, for the fulfilment of Subscriber's obligation to respond to a Data Subject Request under Data Protection Laws and Regulations. In addition, to the extent Subscriber, in its use of the Service, does not have the ability to address a Data Subject Request, Higher Logic shall, upon Subscriber's request, provide commercially-reasonable efforts to assist Subscriber in responding to such Data Subject Request, to the extent that Higher Logic is legally authorized to do so, and the response to such Data Subject Request is required under Data Protection Laws and Regulations. To the extent legally permitted, Subscriber shall be responsible for any reasonable costs arising from Higher Logic's provision of such assistance.
6. **Higher Logic Personnel.** Higher Logic shall ensure that its personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training regarding their responsibilities, and have executed written confidentiality agreements. Higher Logic shall take commercially-reasonable steps to ensure the reliability of any Higher Logic personnel engaged in the Processing of Personal Data. Higher Logic shall ensure that Higher Logic's access to Personal Data is limited to those personnel assisting in the provision of the Service in accordance with the Agreement.
7. **Data Protection Officer.** Higher Logic shall appoint a data protection officer if and whereby such appointment is required by Data Protection Laws and Regulations.
8. **Higher Logic's Sub-processors.** Subscriber has instructed or authorized the use of Subprocessors to assist Higher Logic with respect to the performance of Higher Logic's obligations under the Agreement and Higher Logic agrees to be responsible for the acts

or omissions of such Sub-processors to the same extent as Higher Logic would be liable if performing the services of the Sub-processors under the terms of the Agreement. Higher Logic shall ensure that each Sub-processor the arrangement between Higher Logic and each Subprocessor is governed by a written contract including terms which offer at least the same level of protection for Subscriber Personal Data as those set out in this Addendum and in GDPR Article 28(3)-(4). Higher Logic shall make available to Subscriber Higher Logic's list of its then-current Sub-processors at <https://www.higherlogic.com/legal/subprocessors>.

Subscriber acknowledges and agrees that (a) Higher Logic's Affiliates may be retained as Sub-processors; and (b) Higher Logic and Higher Logic's Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Service.

Higher Logic shall provide a mechanism by which Subscriber may subscribe to notifications of new Sub-processors for the Service at <https://resources.higherlogic.com/notification-of-sub-processor-change> and if Subscriber subscribes, Higher Logic shall provide notification of a new Sub-processor(s) before authorizing any new Sub-processor(s) to process Personal Data in connection with the provision of the Service. In order to exercise its right to object to Higher Logic's use of a new Sub-processor, Subscriber shall notify Higher Logic promptly in writing within ten (10) business days after receipt of Higher Logic's notice. In the event Subscriber objects to a new Sub-processor, and that objection is not unreasonable, Higher Logic will use reasonable efforts to make available to Subscriber a change in the Service or recommend a commercially-reasonable change to Subscriber's configuration or use of the Service to avoid Processing of Personal Data by the objected- to new Sub-processor without unreasonably burdening the Subscriber. If Higher Logic is unable to make available such change within a reasonable time period, which shall not exceed thirty (30) days, Subscriber may terminate the applicable Order Form(s) with respect only to a Service which cannot be provided by Higher Logic without the use of the objected-to new Sub-processor by providing written notice to Higher Logic within ten (10) days following such thirty (30) day cure period. Higher Logic will refund Subscriber any prepaid fees covering the remainder of the term of such Order Form(s) following the effective date of termination with respect to such terminated Service. The parties agree that the copies of the Sub- processor agreements that must be provided by Higher Logic to Subscriber pursuant to Clause 5(j) of the Standard Contractual Clauses may have all commercial information, or clauses unrelated to the Standard Contractual Clauses or their equivalent, removed by Higher Logic beforehand; and, that such copies will be provided by Higher Logic, in a manner to be determined in its discretion, only upon request by Subscriber.

9. Liability for Sub-processors. Higher Logic shall be liable for the acts and omissions of its Sub-processors to the same extent Higher Logic would be liable if performing the services of each Sub-processor directly under the terms of this DPA, except as otherwise set forth in the Agreement.
10. Security Measures. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Higher Logic shall,

in relation to Subscriber Data, implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR. Higher Logic regularly monitors compliance with these measures. In assessing the appropriate level of security, Higher Logic shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data breach. Higher Logic will not materially decrease the overall security of the Service during Subscriber's and/or Authorized Affiliates' subscription term.

11. **Notifications Regarding Subscriber Data.** Higher Logic has in place reasonable and appropriate security incident management policies and procedures, and shall notify Subscriber without undue delay of the unlawful or accidental destruction, alteration or damage or loss, unauthorized disclosure of, or access to, Subscriber Data, including Personal Data, transmitted, stored or otherwise Processed by Higher Logic or its Sub-processors of which Higher Logic becomes aware (hereinafter, a "Subscriber Data Incident"), as required to assist the Subscriber in ensuring compliance with its obligations to notify the Supervisory Authority in the event of Personal Data breach. Higher Logic shall make reasonable efforts to identify the cause of such Subscriber Data Incident, and take those steps as Higher Logic deems necessary and reasonable in order to remediate the cause of such a Subscriber Data Incident, to the extent that the remediation is within Higher Logic's reasonable control. The obligations set forth herein shall not apply to incidents that are caused by either Subscriber or Subscriber's Users.
12. **Return or Deletion of Subscriber Data.** Higher Logic shall, at Subscriber's election, return all Subscriber Data to Subscriber and, to the extent allowed by applicable law, automatically delete any and all copies of Subscriber Data, unless the retention of the data is required by applicable Data Protection Laws and Regulations; provided that Higher Logic shall ensure the confidentiality of such retained Subscriber Data, and shall ensure that such data is only processed for the purposes specified under such laws requiring its storage for the period specified therein and for no other purpose. The parties agree that the certification of deletion of Personal Data that is described in Clause 12(1) of the Standard Contractual Clauses shall be provided by Higher Logic to Subscriber only upon Subscriber's request.
13. **Authorized Affiliates.** The parties agree that, by executing the DPA, the Subscriber enters into the DPA on behalf of itself and, as applicable, in the name and on behalf of its Authorized Affiliate(s), thereby establishing a separate DPA between Higher Logic and each such Authorized Affiliate, subject to the provisions of the Agreement. Each Authorized Affiliate agrees to be bound by the obligations under this DPA and, to the extent applicable, the Agreement. An Authorized Affiliate is not and does not become a party to the Agreement, and is only a party to the DPA. All access to and use of the Service by Authorized Affiliate(s) must comply with the terms and conditions of the Agreement and any violation thereof by an Authorized Affiliate shall be deemed a violation by Subscriber.

14. Communications. The Subscriber that is the contracting party to the Agreement shall remain responsible for coordinating all communication with Higher Logic under this DPA, and shall be entitled to transmit and receive any communication in relation to this DPA on behalf of its Authorized Affiliate(s).
15. Exercise of Rights. In the event that an Authorized Affiliate becomes a party to the DPA, it shall, to the extent required under applicable Data Protection Laws and Regulations, be entitled to exercise the rights and seek remedies under this DPA, except where applicable Data Protection Laws and Regulations require the Authorized Affiliate to exercise a right or seek any remedy under this DPA against Higher Logic directly by itself, the parties agree that (i) solely the Subscriber that is the contracting party to the Agreement shall exercise any such right or seek any such remedy on behalf of the Authorized Affiliate, and (ii) the Subscriber that is the contracting party to the Agreement shall exercise any such rights under this DPA in a combined manner for all of its Authorized Affiliates together, instead of doing so separately for each Authorized Affiliate.
16. Liability. Each party's and all of its Affiliates' liability, taken together in the aggregate, arising out of or related to this DPA, and all DPAs between Authorized Affiliates and Higher Logic, whether in contract, tort or under any other theory of liability, is subject to the 'Limitation of Liability' section of the Agreement, and any reference in such section to the liability of a party means the aggregate liability of that party and all of its Affiliates under the Agreement and all DPAs together. Higher Logic's total liability for all claims from the Subscriber and all of its Authorized Affiliates arising out of or related to the Agreement and each DPA shall apply in the aggregate for all claims under both the Agreement and all DPAs established under this Agreement, including by Subscriber and all Authorized Affiliates, and shall not be understood to apply individually and severally to Subscriber and/or to any Authorized Affiliate that is a contractual party to any such DPA. Each reference to the DPA herein means this DPA, including its Appendices.
17. GDPR. Higher Logic will Process Personal Data in accordance with the GDPR requirements directly applicable to Higher Logic's provision of the Service.
18. Data Protection Impact Assessment. Upon Subscriber's request, Higher Logic shall provide Subscriber with reasonable cooperation and assistance needed to fulfil Subscriber's obligation under the GDPR to carry out a data protection impact assessment related to Subscriber's use of the Service, to the extent Subscriber does not otherwise have access to the relevant information, and to the extent such information is available to Higher Logic. Higher Logic shall provide reasonable assistance to Subscriber in the cooperation or prior consultation with the Supervisory Authority in the performance of its tasks to the extent required under the GDPR (to include GDPR Articles 35 and 36).
19. Standard Contractual Clauses. The Standard Contractual Clauses apply to (i) the legal entity that has executed the Standard Contractual Clauses as a data exporter and its Authorized Affiliates and, (ii) all Affiliates of Subscriber established within the European Economic Area, Switzerland and the United Kingdom, which have signed

Order Forms for the Service. For the purpose of the Standard Contractual Clauses the aforementioned entities shall be deemed “data exporters.”

20. Audits. The parties agree that the audits described in Clause 5(f) and Clause 12(2) of the Standard Contractual Clauses shall be carried out in accordance with the following specifications: following Subscriber’s written request, and subject to the confidentiality obligations set forth in the Agreement, Higher Logic shall make available to Subscriber information regarding the Higher Logic Group’s compliance with the obligations set forth in this DPA, to include, if and to the extent that Higher Logic makes them generally available to its Subscribers, third-party certifications and audits. Subscriber may contact Higher Logic in accordance with the “Notices” Section of the Agreement to request an on-site audit of the procedures relevant to the protection of Personal Data. Subscriber may not request more than one audit per year (unless otherwise permitted under Data Protection Laws and Regulations) and all audits shall be conducted with a representative of Higher Logic present at all times, shall be subject to Higher Logic’s policies during Higher Logic’s regular business hours and shall not unreasonably interfere with Higher Logic’s business activities. If a third party is to conduct such audit, the third party must be mutually agreed to by Subscriber and Higher Logic and must execute a confidentiality agreement acceptable to Higher Logic before conducting the audit. Subscriber shall reimburse Higher Logic for any time expended for any such on-site audit at the Higher Logic Group’s then-current professional services rates, which shall be made available to Subscriber upon request. Before the commencement of any such on-site audit, Subscriber and Higher Logic shall mutually agree upon the scope, timing, and duration of the audit in addition to the reimbursement rate for which Subscriber shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by Higher Logic. Subscriber shall promptly notify Higher Logic and provide information about any actual or suspected non-compliance discovered during an audit and shall provide Higher Logic with a copy of the audit report. Subscriber may only use the audit report to confirm Higher Logic’s compliance with this DPA and the audit report will be Confidential Information of both parties under the Agreement. If the requested audit scope is addressed in an SOC 2, ISO, NIST or other similar audit report performed by a qualified third party auditor within the prior twelve months and Higher Logic confirms that there are no known material changes in the controls audited, Subscriber agrees to accept those findings in lieu of requesting an audit of the controls covered by the report.

The provision in this section shall by no means derogate from or materially alter the provisions on audits as specified in the Standard Contractual Clauses.

21. Order of Precedence. This DPA is incorporated into and forms part of the Agreement. For matters not addressed under this DPA, the terms of the Agreement apply. With respect to the rights and obligation of the parties vis-à-vis each other, in the event of a conflict between the terms of the Agreement and this DPA, the terms of this DPA will control. In the event of a conflict between the terms of the DPA and the Standard Contractual Clauses, the Standard Contractual Clauses will prevail.



*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties hereby execute this Data Processing Addendum, effective as of the Effective Date.

**CONTROLLER**

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PROCESSOR**

Signature: Kevin H. Boyce

Company Name: Higher Logic, LLC

Printed Name: Kevin Boyce

Title: CEO

Date: 9/19/2018



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL JUSTICE

Directorate C: Fundamental rights and Union citizenship  
**Unit C.3: Data protection**

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**Commission Decision C(2010)593**  
**Standard Contractual Clauses (processors)**

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation: .....

Address: .....

Tel.: ..... ; fax: ..... ; e-mail: .....

Other information needed to identify the organisation:

.....  
(the data **exporter**)

And

Name of the data importing organisation: Higher Logic LLC

Address: 1919 N Lynn Street, Suite 500, Arlington, Virginia 22209

Tel.: (202) 360-4402; fax: (866) 533-0428; e-mail:

Other information needed to identify the organisation:

.....  
(the data **importer**)

each a “party”; together “the parties”,

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

## *Clause 1*

### ***Definitions***

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## *Clause 2*

### ***Details of the transfer***

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

### *Clause 3*

#### ***Third-party beneficiary clause***

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

### *Clause 4*

#### ***Obligations of the data exporter***

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful

destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

## *Clause 5*

### ***Obligations of the data importer***

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in

- Appendix 2 before processing the personal data transferred; (d) that it will promptly notify the data exporter about:
- (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
  - (ii) any accidental or unauthorised access, and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

## *Clause 6*

### ***Liability***

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data

importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

#### *Clause 7*

##### ***Mediation and jurisdiction***

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
  - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
  - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

#### *Clause 8*

##### ***Cooperation with supervisory authorities***

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.



3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

#### *Clause 9*

### ***Governing Law***

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

#### *Clause 10*

### ***Variation of the contract***

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

#### *Clause 11*

### ***Subprocessing***

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

*Clause 12*

***Obligation after the termination of personal data processing services***

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

**On behalf of the data exporter:**

Name (written out in full):

Position:

Address:

Other information necessary in order for the contract to be binding (if any):

Signature.....

(stamp of organisation)

**On behalf of the data importer:**

Name (written out in full): Kevin Boyce

Position: CEO

Address: 1919 N Lynn Street, Suite 500, Arlington, Virginia 22209 Other

information necessary in order for the contract to be binding (if any).

Signature.....

(stamp of organisation)

## **APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES**

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

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

The data exporter is (please specify briefly your activities relevant to the transfer):

.....  
.....

### **Data importer**

The data importer is (please specify briefly activities relevant to the transfer):

Higher Logic, LLC is a provider of email marketing, marketing automation, and community and collaboration software services which involves sub-processing personal data provided by, and pursuant to the instructions and directions of, the processor in accordance with the terms of the relevant processing agreement.

### **Data subjects**

The personal data transferred concern the following categories of data subjects (please specify):  
Customers or prospective customers of data exporter (natural persons), individuals, employees, agents, contractors, and affiliates of data exporter.

### **Categories of data**

The personal data transferred concern the following categories of data (please specify):

Non-sensitive demographic data: First, Middle and Last Name; Email Address; Company Name, and Title

### **Special categories of data (if appropriate)**

The personal data transferred concern the following special categories of data (please specify):  
None

### **Processing operations**

The personal data transferred will be subject to the following basic processing activities (please specify):

The objective of Processing of Personal Data by data importer is the performance of the processing services pursuant to the Agreement, as requested by the data exporter, which may include collection, organization, storage, adaptation or alteration, retrieval, consultation, use, or alignment or combination.

### **DATA EXPORTER**

Name:.....

Authorised Signature .....

### **DATA IMPORTER**

Name: Kevin Boyce

Authorised Signature .....



## **APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES**

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

### **Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):**

Higher Logic maintains administrative, physical and technical safeguards for the protection of the security, confidentiality and integrity of Personal Data uploaded to the Services. Higher Logic staff are subject to background checks and sign confidentiality agreements protecting client data. Platform security practices include application firewalls, endpoint protection, intrusion detection, and log management. Active analysis is provided by a security operations center.

#### **DATA EXPORTER**

Name:.....

Authorised Signature .....

#### **DATA IMPORTER**

Name: Kevin Boyce

Authorised Signature .....

