

Vanilla Forums ULC (“Vanilla”) Terms and Conditions

In consideration of the mutual premises and covenants of the Parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. **Services.** Vanilla agrees to provide the services (the “**Services**”) specified in the subscription authorization form (the “**Subscription Authorization Form**”) in accordance with the terms and conditions set out in these terms and conditions (these “**Terms**”) and the appendices attached hereto.
2. **Fees and Payment.** The Customer agrees to pay Vanilla the subscription fees and any additional fees as set out in the Subscription Authorization Form. Payments will be invoiced by Vanilla commencing on the subscription start date set out in the Subscription Authorization Form and at the frequency set out in the Subscription Authorization Form. Subscription fees and any additional fees are not refundable, except as expressly provided herein, and shall be paid in advance.
3. **Restrictions.** The Customer will not: (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 Higher Logic or its suppliers on any of the Software Services; or (vii) access or use the Software Services in violation of applicable any local, state, national and foreign laws, rules, regulations, guidelines, directives, treaties and regulations of all government authorities (“**Applicable Laws**”).
4. **Representations and Warranties.** The Customer hereby represents, warrants and covenants throughout the Term, and acknowledges that Vanilla is relying on

such representations, warranties and covenants in connection with entering into these Terms, as follows:

- (a) the Customer’s use of the Services and the forums provided as part of the Services (the “**Forums**”) will not infringe the proprietary rights, including but not limited to the copyright, patent, trademark or trade secret rights, of any third party;
- (b) the Customer will monitor the use of the Forums by its end users and will promptly remove: (i) any materials that infringe the proprietary rights, including but not limited to the copyright, patent, trademark or trade secret rights, of any third party; and (ii) any viruses, worms, malware, Trojan horses or other harmful or destructive content;
- (c) the Customer has fully complied with any third-party licenses relating to its use of the Services, and has required its end users to comply with the terms and conditions of any such third party licenses;
- (d) the Customer’s use of the Services does not and will not contain or install any viruses, worms, malware, Trojan horses or other harmful or destructive content;
- (e) the Customer’s use of the Services does not and will not: (i) result in the posting or distribution of spam or machine- or randomly-generated content; (ii) involve the posting or distribution of unethical or unwanted commercial content designed to drive traffic to third party sites or boost search engine rankings of third party sites; (iii) further unlawful acts (such as phishing) or mislead recipients as to the source of the material (such as spoofing); (iv) result in the posting or distribution of libelous or defamatory content, contain threats or incite violence towards individuals or entities, and does not violate the privacy or publicity rights of any third party; or (v) be advertised via unwanted electronic messages such as spam links on newsgroups, email lists, other forums and web sites, and similar unsolicited promotional methods;
- (f) the Customer will require its end users to agree not to use the Forums in a manner which will result in the items listed in Section 3(e);

- (g) the Forums are not named in a manner that misleads users into thinking that the Customer is another person or entity;
 - (h) the Customer will not itself, nor permit any end users to use the Forums to collect, transmit, provide, or otherwise process protected sensitive information about an individual, such as, but not limited to financial account numbers, insurance plan numbers, protected health or medical information, and government-issued identifiers (e.g., Social Security numbers), (collectively, “**Sensitive Information**”); and
 - (i) the Customer has obtained and will obtain the consent of its end users to the collection, use and disclosure of their personal information in connection with such end users’ use of the Forums, and such consent shall include the right for the Customer to disclose such personal information to Vanilla to the extent required for Vanilla to provide the Services.
5. **Security.** The Customer is solely responsible for its use of the Services and for maintaining the security of Customer’s credentials and access to the Services. The Customer must immediately notify Vanilla of any unauthorized uses of the Forums, Customer’s account or any other breaches of security.
6. **Confidentiality.**
- (a) For purposes of these Terms, “**Confidential Information**” shall include the terms of these Terms (including all pricing information), all communication between the Parties regarding the Services and any information that is clearly identified in writing at the time of disclosure as confidential or information that ought to be considered confidential whether identified as confidential or not. Notwithstanding the foregoing, Confidential Information shall not include information which: (i) is known publicly; (ii) is generally known before disclosure; (iii) has become known publicly, without fault of the Party receiving the Confidential Information; (iv) the Party receiving the Confidential Information becomes aware of from a third party not bound by non-disclosure obligations to the Disclosing Party; or (v) is aggregated data that does not contain any personally identifiable or Customer-specific information.
 - (b) Each Party agrees: (a) to keep confidential all Confidential Information of the other Party; (b) not to use or disclose Confidential Information

except to the extent necessary to perform its obligations or exercise rights under these Terms; (c) to protect the confidentiality of Confidential Information in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information); and (d) and to make Confidential Information available to authorized persons only on a “need to know” basis. Either Party may disclose Confidential Information on a need to know basis to its representatives, advisors, contractors and service providers who are bound by obligations requiring them to maintain such Confidential Information in strict confidence. Notwithstanding the foregoing, this Section will not prohibit the disclosure of Confidential Information to the extent that such disclosure is permitted by law or order of a court or other governmental authority or regulation.

- 7. **Content License.** The Customer hereby grants Vanilla a world-wide, royalty-free, and non-exclusive license to reproduce, modify, adapt and publish any content (including, without limitation, any text, graphics, audio files, video files and software) (collectively, “**Content**”) posted or distributed on the Forums solely for the purpose of displaying, distributing and promoting the Forums and providing the Services. If the Customer deletes Content, Vanilla will use reasonable efforts to remove it from the Forums, but the Customer acknowledges that caching or references to the Content may not be made immediately unavailable.
- 8. **Offensive Content.** Notwithstanding anything to the contrary herein, Vanilla has the right (but not the obligation) to: (i) refuse or remove any Content that Vanilla determines, acting reasonably, violates these Terms or is in any way harmful, objectionable or in violation of a third party’s rights; or (ii) terminate or deny access to and use of the Services and/or the Forums by any individual or entity in the event that such individual’s or entity’s use of the Services and/or Forums is determined by Vanilla, acting reasonably, to be in breach of these Terms or is in any way harmful, objectionable or in violation of a third party’s rights.
- 9. **Responsibility for Content.** The Customer acknowledges that Vanilla has not reviewed, and cannot review, all of the Content posted or distributed through the Forums (including, without limitation, any Content that may be provided or made available through links to third party sites or software). The Customer is responsible for taking all necessary precautions to protect itself and its end users and its

and their Customer's computer systems from viruses, worms, Trojan horses, and other harmful or destructive Content that may be posted or distributed through the Forums.

10. **Potential Copyright Infringement.** The Customer shall not post or distribute any Content through the Forums that violates the copyrights of any third party. If Customer becomes aware that Content posted or distributed through the Forums violates the copyright of a third party, Customer shall promptly notify Vanilla. Vanilla will use its commercially reasonable efforts to respond to all such notices, including as required or appropriate by removing the infringing material or disabling all links to the infringing material.

11. **Intellectual Property.**

- (a) These Terms does not transfer from Vanilla to Customer any Vanilla or third party intellectual property, and all right, title and interest in and to such intellectual property will remain solely with the owner of such intellectual property. The Customer has no right or license to reproduce or otherwise use any Vanilla or third-party trademarks unless expressly permitted by Vanilla.
- (b) Vanilla shall own and retain all right, title and interest in and to all improvements, enhancements or modifications thereto developed by Vanilla in connection with providing the Services.
- (c) In the event that Vanilla provides custom developments, extensions or applications as part of a professional services engagement with the Customer, the Parties agree that the Customer will be the owner of such developments, extensions or applications, (provided that any such Customer developments, extensions or applications are agreed to between the parties and expressly identified in writing), and in no instance will Customer), but will not obtain any ownership rights in the portion of the Services that Vanilla makes generally available to its customers.
- (d) Vanilla expressly acknowledges and agrees that as between Vanilla, the Customer and any third party end users, Vanilla will not have any ownership rights in or to the Content posted or distributed on the Forums. Vanilla shall have the right to access and use such Content (i) as necessary to provide the Services and (ii) for trend analysis that may assist Vanilla in the provision of its services and in its business generally; provided that no such trend analysis shall result in the

disclosure of any personal information about Customer or such third parties.

12. **Term and Termination.**

- (a) These Terms will commence on the Subscription Start Date specified in the Subscription Authorization Form and will continue for the period specified in the Subscription Authorization Form (the "**Initial Term**"). Upon expiration of the Initial Term, these Terms shall automatically renew for twelve (12) month periods (each a "**Renewal Term**") until terminated as described herein. In respect of any Renewal Term, Vanilla reserves the right to change the payment terms and fees for such upcoming Renewal Term, provided, however, that: (i) Vanilla shall have given written notice to the Customer not less than forty-five (45) days prior to the end of the Initial Term or then current Renewal Term, as applicable; and (ii) Vanilla shall not increase the applicable Subscription Fees by more than 8% relative to the subscription Fees paid in respect of the prior period.
- (b) Vanilla may terminate these Terms for convenience upon sixty (60) days advance written notice to the Customer, with such termination becoming effective at the end of such sixty (60) day period. In the event Vanilla terminates these Terms pursuant to this paragraph, the Customer shall be responsible for paying all fees up to the effective date of termination; provided, however, that if the Customer has prepaid any fees Vanilla shall refund the portion of such prepaid fees relating to the period following the effective date of termination.
- (c) Either Party may terminate these Terms by giving written notice to the other Party: (i) if the other commits a material breach of these Terms or any appendices attached hereto and fails to remedy such material breach within thirty (30) days after delivery of written notice by the non-breaching Party to the breaching Party of the occurrence or existence of such material breach; or (ii) if the other Party applies for or consents to the appointment of a receiver, trustee, or liquidator for all or substantially all of its assets or such a receiver, trustee, or liquidator is appointed, or the other Party has filed against it an involuntary petition of bankruptcy that has not been dismissed within sixty (60) days thereof, or files a voluntary petition of bankruptcy, or a petition or answer seeking reorganization, or an arrangement with

creditors, or seeks to take advantage of any other law relating to relief of debtors. In the event the Customer terminates these Terms pursuant to this paragraph, the Customer shall be responsible for paying all fees up to the effective date of termination; provided, however, that if the Customer has prepaid any fees Vanilla shall refund the portion of such pre-paid fees relating to the period following the effective date of termination. In the event that Vanilla terminates these Terms pursuant to this paragraph, the Customer shall be responsible for paying the remaining fees until the end of the Initial Term or Renewal Term, as applicable, and shall not be entitled to any refund to the extent such fees have been prepaid.

- (d) All provisions of these Terms which by their nature ought to survive termination shall survive termination, including, without limitation, Sections 66, 11, 12, 13, 14, 16, 17 and 18.

13. **Disclaimer.** The Services are provided “as is”. Vanilla hereby disclaims all representations, warranties and conditions of any kind, express or implied, including, without limitation, those in respect of merchantable quality and fitness for a particular purpose. Vanilla makes no representation or warranty that the Services will be error free or that access thereto will be continuous or uninterrupted. To the extent the Services involve importing data provided by the Customer, Vanilla makes no representation or warranty that such data will be imported completely or without error. Vanilla hereby disclaims any responsibility for any harm resulting from the use by end users of the Forums or the Services or from any downloading by end users of Content posted or distributed through the Forums.

14. **Limitation of Liability.** In no event will Vanilla be liable under these Terms under any legal or equitable theory for: (i) any special, punitive, exemplary, incidental, reliance, indirect or consequential damages (including, without limitation, damages for loss of business, loss of profits, business interruption, loss of data or other similar pecuniary loss); (ii) the cost of procurement or substitute products or services; or (iii) interruption of use (except as expressly contemplated in any applicable service level agreement between the Customer and Vanilla) or loss or corruption of data. The maximum aggregate amount that Vanilla may be liable for under these Terms shall be: (i) in connection with its indemnification obligations in Section 16(b) or any breach of Section 6, the fees paid by the Customer to Vanilla under these Terms during the eighteen (18) month period prior to the

indemnification obligation arising; and (ii) in connection with the breach of any other provision of this Agreement, the fees paid by the Customer to Vanilla under these Terms during the twelve (12) month period prior to the breach.

15. **Compliance with Laws.** The Parties shall comply with all Applicable Laws (including, without limitation, in respect of the Customer, any local laws or regulations regarding online conduct and acceptable content, and the transmission of data).

16. **Indemnification.**

(a) The Customer is solely responsible for its and any third party’s (including, without limitation, Customer’s end users) use of the Forums and shall indemnify and hold Vanilla, its officers, directors, employees, agents and representatives harmless from and against all third party claims, proceedings, causes of action, suits, damages, losses, liabilities, costs and expenses (including reasonable legal fees) whatsoever that may arise, either directly or indirectly, relating to Content posted or distributed through the Forums (including, but not limited to Sensitive Information posted or distributed in violation of Section 4(h) .

(b) Vanilla shall indemnify and hold the Customer harmless from and against all third party claims, proceedings, causes of action, suits, damages, losses, liabilities, costs and expenses (including reasonable legal fees) whatsoever that may arise, either directly or indirectly, in respect of infringement by the Services (which, for the avoidance of doubt, shall not include any Content posted or distributed using the Services or through the Forums) of any intellectual property rights of a third party.

(c) In the event that the Services are held to or believed by Vanilla to infringe the intellectual property rights of a third party, Vanilla will have the option to: (i) replace or modify the Services to be non-infringing; (ii) obtain for the Customer the right to continue using the Services; or (iii) if both (i) and (ii) are not reasonably practicable, terminate these Terms and refund any prepaid fees for the period following the effective date of termination.

17. **Force Majeure.** Neither Party shall be responsible for its failure to perform (except in connection with the payment of fees hereunder) to the extent due to unforeseen circumstances or causes beyond its control,

including but not limited to acts of God, wars, terrorism, riots, embargoes, acts of civil or military authorities, fires, floods, accidents, epidemics, pandemics, outbreaks of illness, or strikes (each a “**Force Majeure Event**”), provided that such Party gives the other Party prompt written notice of the failure to perform and the reason therefore and uses its reasonable efforts to limit the resulting delay in its performance.

18. **Miscellaneous.**

- (a) These Terms constitutes the entire agreement between Vanilla and the Customer concerning the subject matter hereof, and it may only be modified by a written amendment signed by both Parties.
- (b) All notices under these Terms will be in writing. Email notices may be sent to Vanilla at **success@vanillaforums.com**.
- (c) These Terms shall be governed by the laws of the Province of Ontario without regard to its choice or law or conflict of laws provisions.
- (d) A waiver by either party of any term or condition of these Terms or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof.

- (e) Rights under these Terms may be assigned to any party that consents to, and agrees to be bound by, its terms and conditions; provided, however, that Vanilla may assign its rights under these Terms without condition.
- (f) Whenever possible, each provision of these Terms shall be interpreted in such manner as to be effective and valid under applicable law. If the application of any provision of these Terms to any particular facts or circumstances is held to be invalid or unenforceable by an arbitrator or court of competent jurisdiction, then (i) the validity and enforceability of such provision as applied to any other particular facts or circumstances and the validity of other provisions of these Terms shall not in any way be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.
- (g) These Terms will be binding upon and will inure to the benefit of the parties, their successors and permitted assigns.