



## ENTERPRISE SERVICES AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING AND/OR USING LIFERAY SOFTWARE OR SERVICES. BY USING LIFERAY SOFTWARE OR SERVICES, CUSTOMER SIGNIFIES ITS ASSENT TO AND ACCEPTANCE OF THIS AGREEMENT AND ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS AGREEMENT. AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF CUSTOMER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT USE LIFERAY SOFTWARE OR SERVICES. This Agreement incorporates those appendices at the end of this Agreement.

This Liferay Enterprise Services Agreement, which consists of the general terms and conditions set forth in this document ("**Base Agreement**") and other documents identified in Section 2.1 below and referenced appendices and documents located at URLs (the "**Agreement**"), is between Liferay, S.L. ("**Liferay**") with a principal place of business at Paseo de la Castellana 280, planta 1ª, modulo B, 28046, Madrid, and the purchaser or user of Liferay services who accepts the terms of this Agreement ("**Customer**"). The effective date of this Agreement is the earlier of the date that Customer signs or accepts this Agreement or the date that Customer uses Liferay services ("**Effective Date**").

### 1. Definitions

**"Affiliate"** means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party, where "**control**" is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting shares, by contract or otherwise.

**"Appendix"** or **"Appendices"** means the applicable appendix or appendices for Services as further defined in Section 2.1 below.

**"Business Partner"** means an organization authorized by Liferay, directly or indirectly, to promote, market, sell, resell, distribute and support Services. Business Partners may for example include (without limitation) distributors, resellers or original equipment manufacturers (OEMs). For the avoidance of doubt, "Business Partner" does not mean subcontractors with whom Liferay has entered into an agreement to perform one or more of the Services offered under the Agreement.

**"Confidential Information"** means all information disclosed by either Liferay or Customer ("**Disclosing Party**") to the other party ("**Recipient**") during the term of the Agreement that either (i) is marked confidential or with a similar marking, or (ii) is disclosed orally and described as confidential at the time of disclosure and subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure, or (iii) would be considered confidential by a reasonable third party that is not familiar with the specific industry of the Disclosing Party. Notwithstanding the foregoing, information disclosed by either party concerning technical or product information of any nature, personal data, information relating to the provision of Services, trade secrets, software code, proposals, financial and pricing information and rates, product and marketing plans, marketing opportunities and customer lists is hereby deemed to be Confidential Information regardless of whether or not it is so identified. If the Recipient incorporates Confidential Information it has received into its own notes or other data, then those items are also considered Confidential Information. Confidential Information shall not include information which: (1) is or later becomes publicly available other than by the Recipient disclosing it in violation of the Agreement or is disclosed by the Disclosing Party without any obligation of confidentiality; (2) is or becomes available to the Recipient from a source other than the Disclosing Party without the requirement that it be treated as confidential, provided that such source was not known by the Recipient to be bound by an obligation of confidentiality with respect to such information; (3) is independently developed by the Recipient without use of the Confidential Information; (4) is in the rightful possession of the Recipient at the time of disclosure by the Disclosing Party without an obligation of confidentiality; or (5) is generally known, useless or easily developed by someone with ordinary skills in the business of the Recipient; (6) is disclosed by the Recipient with the Disclosing Party's prior written approval; (7) is licensed under an Open Source License (as defined by the Open Source Initiative ([www.opensource.org](http://www.opensource.org))); or, (8) the parties agree in writing should not be treated confidentially or may be disclosed.

**"Customer Resources"** means Customer's information, documents, systems, software, workspace, network access and telephone connections and similar resources available to Customer.

**"Documentation"** shall have the meaning as defined in the applicable Appendix.

**"End User License Agreement"** means the license terms that (i) govern the software that may be provided as part of certain Services and that (ii) are set forth in either a license grant in the Agreement or in a separate end user license agreement contained or referenced in the applicable Appendices or Order Form.

**"Fees"** means the fees to be paid by Customer to either Liferay or a Business Partner as further specified in Section 4 below.

**"Order Form"** means a transaction document that (i) identifies the applicable Services acquired by Customer, (ii) expressly states that it is governed by the terms and conditions of the Agreement and (iii) is signed by the parties.

**"Professional Services"** means fee-bearing consulting services as defined in the applicable Appendix and specified in an Order Form.

**"Residuals"** means any general ideas, concepts, know-how, methodologies, processes, technologies, algorithms or techniques retained in the unaided mental impressions of the developing party or its Affiliates' personnel relating to its business, which the developing party, individually or jointly, develops under the Agreement.

**"Services"** means the specific services that Liferay will provide to Customer under the Agreement as further defined in the applicable Appendices and specified in an Order Form.

**"Specifications"** means the performance specifications applicable to Services as set forth in the Documentation or otherwise agreed between the parties in an Order Form.

**"Subscription Services"** mean fee-bearing subscriptions for Services provided for a defined period of time, as defined in the applicable Appendix and as specified in an Order Form.

**"Taxes"** means (i) any tax, levy, impost, deduction, charge, rate, withholding or duty by whatever name called levied, imposed or assessed with respect to any transaction contemplated by the Agreement, including (without limitation) (a) goods and services tax, value added tax, sales tax, use tax or consumption tax, (b) withholding tax and (c) excise duty, stamp duty, customs duty and other like taxes, fees or surcharges (including regulatory fees or surcharges); and (ii) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the taxes and other amounts referred to in (i) above; but (in all cases) excludes taxes based solely on Liferay's net income.

**"Training Services"** means Liferay's training courses as defined in the applicable Appendix and specified in an Order Form.

**"Unit"** is the measurement of Service usage as further defined in the applicable Appendix and specified in an Order Form.

## **2. Scope of the Agreement**

### **2.1 Elements of the Agreements**

The Agreement establishes a framework for the provision of Services by Liferay to Customer. Liferay offers a variety of Services, including Subscription Services, Professional Services or Training Services. The parties agree that the terms of the Agreement will govern all orders and use by Customer of Services unless otherwise agreed by the parties in writing. Most of these offerings are standardized and described in Appendices, which augment the Agreement. In order to acquire any Services from Liferay, Customer and Liferay will execute an Order Form, which shall identify the applicable Services and incorporate by reference the Base Agreement and the Appendices applicable to the acquired Services. Liferay acknowledges that some customers require the issuance of a purchase order in order to effect orders as part of their procurement systems and processes. If a Customer's purchase order is accepted by Liferay, such acceptance is limited to and the Purchase Order will only become part of the Agreement with respect to the terms of the quantities, descriptions, Services, Fees, delivery schedule, and duration of Services, and any additional or different terms or conditions, or any other attempt by Customer to vary in any degree any of the terms of the Agreement or an Order Form by such purchase order, shall be rejected by the parties and null and void. In the event both Liferay's Order Form and Customer's purchase order are executed by Customer and presented to Liferay for a specific order, only the terms of Liferay's Order Form shall apply. If Customer procures any Services from a Business Partner of Liferay, Section 2.4 will apply.

### **2.2 Order of Priority**

In the event of any conflict or inconsistency between the provisions in the body of the Base Agreement, the Appendices, an Order Form and/or any Customer purchase order terms accepted by Liferay, the terms will be interpreted in the following order: (i) the terms of the applicable Appendix, (2) the terms of the Base Agreement, and for direct orders of the Customer from Liferay (iii) the terms of the applicable Order Form and (iv) the accepted terms of a Customer purchase order issued to Liferay, if applicable; provided however, that a lower ranked document may override the higher ranked document limited to the scope of such lower ranked document only if (and limited to the extent) that the lower ranked document specifically identifies the parties' intent to override provision(s) of the higher ranked document.

### **2.3 Software**

As part of its Services Liferay may provide access to software components for download by Customer. In the context of Liferay's tradition as an open source software provider and unless explicitly specified otherwise in writing, such software is provided free of charge under perpetual licenses which are included in one or more End User License Agreement(s). As part of its Services, Liferay may offer Customer certain value-added assurances in connection with such software, which go beyond the terms of such EULAs. For the avoidance of doubt it is therefore clarified that in the event of a conflict or inconsistency between the terms of the Agreement (including any Appendices and Order Forms) and an End User License Agreement, the terms of the Agreement shall prevail between the parties to the applicable Order Form during the term of the Order Form. Notwithstanding any provision to the contrary in the Agreement, any applicable End User License Agreement will be governed by the laws set forth in the applicable End User License Agreement, without regard to any conflict of laws provisions.

### **2.4 Business Partners**

When Customer orders Services through a Business Partner, Liferay confirms that Liferay is responsible for providing the Services to Customer under the terms of the Agreement. However, Liferay is not responsible and shall not be liable for (i) the actions or omissions of Business Partners, (ii) any additional obligations not set out in the Agreement and which the Business Partners may have agreed to provide to the Customer, and/or (iii) any products or services that Business Partners supply to Customer under any separate agreements between a Business Partner and Customer.

### **2.5 Affiliates**

Liferay and Customer agree that Customer or Affiliates of Customer may acquire Services from Liferay or its Affiliates by entering into an Order Form with Liferay or a Liferay Affiliate. Upon entering into such Order Form, the respective parties agree that for the purposes of that Order Form they will observe, perform and be bound by the terms of the Agreement as if they were parties to it in the place of their respective Affiliates who have originally entered into the Agreement. An Order Form shall be considered a two-party agreement between Liferay or its Affiliate on the one hand and Customer or its Affiliate on the other hand. Accordingly, any reference in the Agreement to "Liferay" or "Customer" shall be construed solely as a reference to the specific entity (either the entities designated above as "Liferay" or "Customer" or their respective Affiliate) that executes or submits an Order Form. The parties acknowledge and agree that in the event an Order Form is executed or submitted by a Liferay Affiliate or a Customer Affiliate, adjustments to the terms of the Agreement may be made in particular, but not limited in order to address disparate tax or legal regimes in other geographic regions.

### 3. License and Ownership

#### 3.1 Marks

Unless expressly stated in an Order Form, no right or license, express or implied, is granted in the Agreement for the use of any Liferay, Liferay Affiliate, Customer, Customer Affiliate or third party trade names, service marks or trademarks, provided that Customer grants Liferay and its Affiliates a license to include the name and logo of Customer in listings made available to the public for the sole purpose of identifying Customer as a customer of Liferay.

#### 3.2 Software

The various software items provided by Liferay as part of the Services under the Agreement are each governed by one or more End User License Agreement(s) as set forth in Section 2.2 above.

#### 3.3 Freedom to Use Ideas

Subject to Section 9 and notwithstanding anything to the contrary contained in the Agreement or an Order Form, the ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements and other information and materials developed by Liferay, individually or jointly, in and during the course of any Order Form may be used by Liferay, in perpetuity without an obligation to account (whether financially or otherwise), in any way Liferay deems appropriate, including by or for itself or its customers or partners.

### 4. Fees, Expenses and Payment Terms

#### 4.1 Unit, Business Partner Transactions

Customer agrees to pay Liferay (or, if applicable, a Business Partner) the applicable Fees for each Unit. The following Sections 4.2, 4.3 and 4.4 shall only apply to direct transactions between Liferay and Customer. In the event that Customer acquires Services from a Business Partner, Sections 4.2, 4.3 and 4.4 will not apply but the applicable fees, payment terms and taxes will be as agreed separately between Business Partner and Customer.

#### 4.2 Fees and Expenses

The Fees for the Services (i) will be identified in an Order Form, (ii) unless otherwise specified in a writing accepted by Liferay, do not include, currency conversion fees, wire transfer fees or other bank payment charges ("**Transaction Fees**") or out-of-pocket expenses incurred by Liferay in order for the Services to be rendered and Customer will make payments net of all Transaction Fees, (iii) are due upon Liferay's acceptance of an Order Form or, for renewal of Services, at the start of the renewal term, and (iv) are payable in accordance with Section 4.3. The Fees for any renewal term for Services or additional Units will be assessed at the time of renewal or the additional order, respectively; provided, that for Subscription Services that renew according to Section 10.2, Liferay provides an email notification of any price changes to the email address associated with the applicable Customer account at least sixty (60) days prior to the renewal date of the Subscription Services following which such prices changes shall take effect on renewal. Liferay has no obligation whatsoever to accept any additional orders. To the extent that Customer utilizes any vendor management systems, Liferay will not be liable for any fees associated with the participation, registration or use of such systems ("**Vendor Management Fees**"). If any party is required to pay, withhold or deduct any Vendor Management Fees or Transaction Fees, Customer shall increase the sum payable to Liferay by the amount necessary to offset any such Vendor Management Fees and Transaction Fees, so that Liferay ultimately receives an amount equal to the full amount of Fees as invoiced.

#### 4.3 Payment Terms

Liferay will invoice Customer for the Fees upon Liferay's acceptance of the applicable Order Form and upon acceptance of any future order. Unless otherwise specified in an Order Form, Customer will pay Fees and expenses, if any, no later than thirty (30) days from the date of receipt of a correct invoice; provided, however, that Fees for Training Services or any service credits are due prior to delivery. Except as otherwise expressly provided in the Agreement or an Order Form, any and all payments made by Customer pursuant to the Agreement including any Order Forms will be made without the right of set-off or chargeback and are non-refundable, provided, however, that this does not otherwise limit the remedies available to Customer under the Agreement in the event of a breach of the Agreement by Liferay. If actual payment has not been received within thirty (30) days of the date of receipt of a correct invoice, Liferay reserves the right (i) to suspend or cancel performance of all or part of the Services, if payment is not received by Liferay within ten (10) days after Liferay provided notice of non-payment to Customer and/or (ii) terminate the applicable Order Form and/or the Agreement in accordance with Section 10.3. Furthermore, Customer will reimburse Liferay for all costs (including reasonable legal fees) associated with collecting delinquent or dishonored payments by Customer that are more than thirty (30) days past due. At Liferay's option, interest charges may be added to any past due amounts at the lower of: (i) one and a half percent (1.5%) per month or (ii) the maximum amount allowed by applicable law. Payments by Customer will thereafter be applied first to accrued interest and then to the principal unpaid balance.

#### 4.4 Taxes

All consideration payable or to be provided under or in accordance with the Agreement (including any Fees) is exclusive of Taxes. Customer will pay Liferay an amount equal to any Taxes arising from or relating to the Agreement or an applicable Order Form which are paid by or are payable by Liferay and are separately itemized in Liferay's invoices to Customer. If Customer is required to withhold or deduct any portion of the payments due to Liferay, Customer will increase the sum payable to Liferay by the amount necessary so that Liferay receives an amount equal to the sum it would have received had Customer not made withholdings or deductions. If Customer is exempt from paying any or all Taxes, Customer shall provide Liferay with written evidence of such Tax exemptions issued by the applicable taxing authority. Customer shall, on at least an annual basis and upon reasonable request from Liferay, update or re-confirm such status. Liferay reserves the right to invoice for applicable Taxes, if Customer fails to maintain or update written evidence of such tax-exempt status with Liferay.

### 5. Reporting and Verification

#### 5.1 Reporting

Customer will notify Liferay in writing (or, if applicable, the Business Partner) promptly if the actual number of Units utilized by Customer exceeds the number of Units for which Customer has paid the applicable Fees. In its notice, Customer will include the number of additional Units and the date(s) on which such Units were

first utilized. Liferay (or the Business Partner, as applicable) will invoice Customer for the applicable Services for such Units and Customer will pay for such Services no later than thirty (30) days from the date of the receipt of the invoice. The Fees for such additional Units will be assessed at Liferay's then-current rates at the time that the Customer provides the notification according to this Section 5.1.

## 5.2 Verification

Upon request, and –unless prior non-compliance has been established–, not more than once during each twelve-months-period, Customer will self-certify and report to Liferay in a writing executed by an authorized representative of Customer with actual knowledge, the actual number of Units utilized by Customer and that Customer is using the Services in accordance with the terms of the Agreement. During the term of the Agreement and for one (1) year thereafter, Liferay or its designated agent may audit Customer's facilities and records to verify Customer's compliance with the Agreement. Any such audit will take place not more than once during each twelve-months-period (unless prior non-compliance has been established), only during Customer's normal business hours and upon no less than ten (10) days prior written notice from Liferay. Liferay will give Customer written notice of any noncompliance, including the number of underreported Units and invoice Customer for the applicable Services. The Fees for such underreported usage will be assessed at Liferay's then-current rates. If Customer underreports the number of Units utilized by more than five percent (5%) of the number of Units for which Customer paid, Liferay will also invoice Customer for the reasonable costs it has incurred as part of the audit in the invoice for the underreported Units. Customer will pay Liferay for the costs together with the Fees for the applicable Services provided with respect to the underreported Units within fifteen (15) days from the date of the invoice.

## 6. Representations and Warranties

### 6.1 Limited Warranty

Each of the parties represents and warrants that (i) it has the authority to enter into the Agreement and (ii) that it will comply with the good business practices and laws in accordance with Section 13.8. Liferay represents and warrants to Customer that: (1) the Services will be performed in a professional and workmanlike manner by qualified personnel; (2) during the applicable Services term, the Agreement with Customer; and (3) to Liferay's knowledge, the Services do not, at the time of delivery to Customer, include malicious code with the purpose of adversely affecting the operation, security or integrity of a system. For the breach of the warranties set forth in this Section 6.1 (1) and (2), Customer's exclusive remedy (except if any of the circumstances listed in Section 7.3, paragraphs (III) or (IV), concur), and Liferay's and its Affiliates' entire liability, will to the maximum extent permitted by applicable law be the re-performance of the applicable Services, or if Liferay cannot substantially correct a breach in a commercially reasonable manner, Customer may terminate the relevant Services and receive a pro rata refund of the Fees paid for the deficient Services as of the effective date of termination.

### 6.2 Disclaimer of Warranty

EXCEPT AS STATED UNDER SECTION 6.1, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES (INCLUDING ANY SOFTWARE) AS PROVIDED BY LIFERAY AND ITS AFFILIATES ARE PROVIDED AND LICENSED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF QUALITY, MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE, AND SUCH IMPLIED WARRANTIES, AND ANY OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS AND TERMS, EXPRESS OR IMPLIED (AND WHETHER IMPLIED BY STATUTE, COURSE OF DEALING, TRADE USAGE OR OTHERWISE) ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. LIFERAY AND ITS AFFILIATES DO NOT GUARANTEE THAT THE SERVICES OR ANY SOFTWARE PROVIDED UNDER THE AGREEMENT HAVE BEEN DESIGNED TO MEET CUSTOMER'S SPECIFIC BUSINESS REQUIREMENTS, THE USE OF SUCH SERVICES OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, COMPLY WITH LEGAL OR REGULATORY REQUIREMENTS APPLICABLE TO CUSTOMER, OR THAT LIFERAY WILL CORRECT ALL SOFTWARE ERRORS. CUSTOMER AGREES THAT IT IS SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED FROM THE USE OF THE SERVICES AND SOFTWARE PROVIDED UNDER THE AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING DISCLAIMER, THE SERVICES AND ANY SOFTWARE PROVIDED UNDER THE AGREEMENT ARE NOT SPECIFICALLY DESIGNED, MANUFACTURED OR INTENDED FOR USE IN (I) FACILITIES OR ENVIRONMENTS REQUIRING FAILSAFE PERFORMANCE, INCLUDING BUT NOT LIMITED TO (A) THE PLANNING, CONSTRUCTION, MAINTENANCE, CONTROL, OR DIRECT OPERATION OF NUCLEAR FACILITIES, (B) AIRCRAFT NAVIGATION, CONTROL OR COMMUNICATION SYSTEMS, WEAPONS SYSTEMS, (C) DIRECT LIFE SUPPORT SYSTEMS OR (II) ULTRA-HAZARDOUS OR STRICT LIABILITY ACTIVITIES AND THE CUSTOMER IS SOLELY RESPONSIBLE AND EXPRESSLY ASSUMES ALL RISK FOR ANY SUCH USE.

## 7. Exclusion and Limitation of Liability, Risk Allocation

### 7.1 Exclusion of Liability

SUBJECT TO SECTION 7.3, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT OR AN ORDER FORM AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL A PARTY OR ITS AFFILIATES HAVE ANY LIABILITY TO THE OTHER PARTY AND/OR ITS AFFILIATES, UNDER ANY LEGAL THEORY, WHETHER IN CONTRACT, EXTRA-CONTRACTUAL RESPONSIBILITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), PRODUCT LIABILITY, STATUTE OR OTHERWISE, FOR OR IN CONNECTION WITH:

- (I) ANY ECONOMIC LOSSES (INCLUDING ANY FORM OF *LUCRUM CESSANS*), LOSS OF REVENUE, LOSS OF CUSTOMERS OR BUSINESS, LOSS OF OR DAMAGE TO REPUTATION OR GOODWILL, LOSS OF ANTICIPATED PROFITS, LOSS UNDER OR IN RELATION TO ANY OTHER CONTRACT, LOSS OR CORRUPTION OF DATA OR INTERRUPTION OF SERVICES, LOSS OF ANTICIPATED SAVINGS OR BENEFITS, RELIANCE OR COVER OR ANALOGOUS COST RELATED TO THE PROCUREMENT OF REPLACEMENT SERVICES OR SOFTWARE;
- (II) ANY LOSSES, COSTS, EXPENSES OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE OTHER PARTY'S NON-COMPLIANCE WITH LAWS OR REGULATIONS (INCLUDING WITHOUT LIMITATIONS THOSE APPLICABLE TO THE OTHER PARTY'S OPERATIONS OR USE OF THE SOFTWARE OR SERVICES), PRODUCT LIABILITY AND INTERRUPTION OR DELAYS IN THE OTHER PARTY'S BUSINESS; OR
- (III) ANY LOSSES, COSTS, EXPENSES OR DAMAGES OTHER THAN DIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOSSES, COSTS OR EXPENSES. FOR THE AVOIDANCE OF DOUBT, THE PARTIES AND AFFILIATES WILL NOT HAVE ANY LIABILITY TO THE OTHER PARTY AND/OR AFFILIATES FOR OR IN CONNECTION WITH DAMAGES, LOSSES, COSTS OR EXPENSES THAT THEY

SHOULD NOT HAVE REASONABLY FORESEEN, EVEN IF SUCH DAMAGES, LOSSES, COSTS AND EXPENSES ARE A DIRECT CONSEQUENCE OF THE PARTY OR AFFILIATES' ACTIONS

IN EACH CASE (I) THROUGH (III), WHETHER OR NOT FORESEEABLE; EVEN IF THE PARTY THAT CAUSES THE DAMAGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, COSTS OR EXPENSES.

## 7.2 Limitation of Liability

SUBJECT TO SECTIONS 7.1 AND 7.3 AND EXCEPT FOR CLAIMS FOR FEES, EXPENSES OR TAXES UNDER THE AGREEMENT INCLUDING ANY ORDER FORM AND INTEREST THEREON, FOR ALL EVENTS AND CIRCUMSTANCES AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE AGGREGATE AND CUMULATIVE LIABILITY OF A PARTY AND ITS AFFILIATES TO THE OTHER PARTY AND/OR ITS AFFILIATES ARISING OUT OF OR RELATING TO THE AGREEMENT AND ALL ORDER FORMS, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, EXTRA-CONTRACTUAL RESPONSIBILITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE WILL NOT EXCEED, THE GREATER OF (I) TWENTY THOUSAND EURO (€20,000) OR (II) THE FEES RECEIVED BY LIFERAY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY, WITH RESPECT TO THE PARTICULAR SERVICES GIVING RISE TO LIABILITY UNDER THE MOST APPLICABLE ORDERING DOCUMENT, PROVIDED THAT, IF CUSTOMER HAS PREPAID ANY FEES FOR SUBSCRIPTION SERVICES FOR TERMS LONGER THAN TWELVE (12) MONTHS, THE APPLICABLE LIABILITY AMOUNT SHALL BE THE ANNUALIZED PRO RATED AMOUNT RECEIVED BY LIFERAY FOR THE RELEVANT TWELVE-MONTH PERIOD.

## 7.3 Exceptions

NOTWITHSTANDING SECTIONS 7.1 AND 7.2 AND ANYTHING ELSE TO THE CONTRARY IN THE AGREEMENT, NOTHING IN THE AGREEMENT SHALL LIMIT OR EXCLUDE THE LIABILITY OF A PARTY OR ITS AFFILIATE(S) IN THE FOLLOWING CIRCUMSTANCES:

- (I) WITH REGARD TO A PARTY'S INFRINGEMENT, MISUSE, EXPORT, OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY LICENSED BY THE PARTY TO THE OTHER PARTY UNDER AN END USER LICENSE AGREEMENT OR OTHERWISE IN WRITING UNDER THE AGREEMENT OR AN ORDER FORM;
- (II) BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 9;
- (III) FRAUD, FRAUDULENT MISREPRESENTATION, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT; OR
- (IV) DEATH OR BODILY INJURY CAUSED BY THE NEGLIGENCE OF A PARTY OR ITS AFFILIATE(S).
- (V) TO THE EXTENT SUCH LIMITATIONS OR EXCLUSIONS OF LIABILITY ARE NOT PERMITTED BY THE APPLICABLE LAW.

## 7.4 Allocations of Risk

SECTIONS 6 AND 7 ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THE AGREEMENT. THIS ALLOCATION IS AN INTRINSIC PART OF, AND THE BASIS OF, THE BARGAIN BETWEEN THE PARTIES AND WITHOUT SUCH ALLOCATION, LIFERAY WOULD NOT HAVE ENTERED INTO THE AGREEMENT. LIFERAY'S PRICES FOR SERVICES REFLECT THIS ALLOCATION OF RISKS AND THE WARRANTIES, DISCLAIMER OF WARRANTIES, EXCLUSIONS AND LIMITATION OF LIABILITY SPECIFIED HEREIN. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS CONTAINED IN SECTIONS 6 AND 7 APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY (INCLUDING ANY LIMITED OR EXCLUSIVE REMEDY) PROVIDED FOR IN THE AGREEMENT FAILS IN ITS ESSENTIAL PURPOSE.

## 8. Legal Assurance

Liferay provides certain legal assurances for intellectual property provided to its Customer in case of third party intellectual property infringement claims. The terms and conditions of these assurances (if applicable) vary depending on the nature of such Services and are therefore set forth in the Appendices.

## 9. Confidentiality

### 9.1 Confidentiality Obligations

Liferay and Customer agree that during the term of the Agreement, as a condition to the receipt of Confidential Information hereunder, Recipient shall: (i) except as expressly permitted by the Agreement not disclose, directly or indirectly, to any third party any portion of the Confidential Information without the prior written consent of the Disclosing Party; (ii) not use or exploit the Confidential Information except for the provision of Services; (iii) upon the Disclosing Party's written request promptly return or destroy, at Recipient's option, all materials and documentation regarding the Confidential Information received hereunder save for (a) Confidential Information stored in routine back-up media not accessible during the ordinary course of business and (b) archival copies of the Confidential Information that the Recipient needs to maintain in order to comply with statutory or regulatory requirements, unless otherwise prohibited by law, provided that in both cases (a) and (b) the Confidential Information shall remain subject to the Agreement; and (iv) exercise at least the same degree of care in safeguarding the Confidential Information as Recipient would with its own confidential information, provided that at a minimum, the Recipient must use reasonable care to protect the information. Both parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information unless terminated earlier pursuant to this Section 9 or in writing by the Disclosing Party; provided that, (1) to the extent the Confidential Information is subject to longer confidentiality terms under mandatory applicable law, the Recipient will protect such Confidential Information as required by such law and (2) if the Confidential Information constitutes a trade secret Recipient will protect such Confidential Information perpetually as long as it constitutes a trade secret.

## 9.2 Permitted Disclosures

The parties may disclose Confidential Information only to those employees, Affiliates, agents, representatives and contractors who have a "need to know" such information in order to undertake their work with respect to the Agreement or otherwise to the benefit of the parties and to its auditors and legal counsel, in each case, who are under a written obligation or otherwise obligated by law to keep such information confidential using standards of confidentiality not less restrictive than those required by the Agreement. Recipient may disclose Confidential Information, if it is required to do so by applicable law, court order, or regulation, any governmental or other regulatory authority. Before disclosing such information, Recipient will notify Disclosing Party of the disclosure requirement (if it can provide notice without breaching any legal or regulatory requirement or court order) and cooperate with Disclosing Party (at the Disclosing Party's expense) to obtain a protective order or other similar protection. If Recipient is required by law, statute, regulation or court order to make such a disclosure Recipient shall furnish only the portion of the Confidential Information that Recipient, in the opinion of its legal counsel, is legally required to disclose and shall exercise reasonable efforts to preserve for the remainder the confidentiality of the Disclosing Party's Confidential Information.

## 9.3 Equitable Relief

Each party acknowledges and agrees that due to the unique nature of Confidential Information, any breach of the obligations of this Section 9 may cause the non-breaching party irreparable harm for which an adequate remedy at law may not be available and that, therefore, the non-breaching party will be entitled to seek appropriate equitable remedies including preliminary or permanent injunction relief from a court of competent jurisdiction to stop or prevent any breach of this Section 9, in addition to all other remedies available at law.

## 10. Term and Termination

### 10.1 Term and Termination of Agreement

The term of the Agreement shall begin on the Effective Date and will terminate at the expiration of ninety (90) days following written notice of termination given by one party to the other. Termination of the Agreement will not operate to terminate any Order Form and the terms and conditions of the Agreement will continue in full force and effect to the extent necessary to give effect to any Order Form in effect at the time of termination of the Agreement and until such time as the applicable Order Form(s) expires or is terminated in accordance with Sections 10.2 or 10.3 below.

### 10.2 Term and Termination of Order Form

The term of an Order Form begins on the date of last signature once the Order Form is fully executed ("**Order Form Effective Date**") and continues in full force and effect until the expiration of the term of the Services ordered in the Order Form (including any renewal terms) or until earlier terminated in accordance with the Agreement. For Professional and Training Services, Customer must use any Services set forth in an Order Form during the term specified in the Order Form or within one (1) year of the Order Form Effective Date, whichever is shorter; if unused, such Services will expire and any Fees paid will not be refunded. Unless otherwise agreed in the applicable Order Form, with respect to Subscription Services and provided that Liferay has provided an email notification of an upcoming renewal to the email address associated with the applicable Customer account at least sixty (60) days prior to the renewal date of the Subscription Services, the term will automatically renew for successive terms of one (1) year each, unless either party gives written notice to the other of its intention not to renew at least thirty (30) days before the commencement of the next renewal term.

### 10.3 Termination

If either party materially breaches the terms of the Agreement or an Order Form, and such breach is not cured within thirty (30) days after written notice of the breach is given to the breaching party, then the non-breaching party may, by giving written notice of termination to the breaching party, terminate the Agreement and/or any applicable Order Form, provided, however, that (i) no cure period will be required for a breach of Section 9 of the Agreement and (ii) in case of non-payment of Fees the cure period shall only be ten (10) days. The termination of an individual Order Form will not terminate any other Order Form or the Agreement unless otherwise specified in the written notice of termination.

### 10.4 Survival

If the Agreement or an Order Form is terminated for any reason, Sections 3, 4, 5.2, 6.2, 7, 9, 10.4, 11, 12, 13.1, 13.4-13.5, and 13.8-13.15 of the Agreement (as they are applicable with respect to each Order Form) will survive.

## 11. Continuing Business

Nothing in the Agreement will preclude or limit Liferay from providing software, materials, or services for itself or other customers, irrespective of the possible similarity of such software, materials or services to those that might be delivered to Customer. The terms of confidentiality in Section 9 will not prohibit or restrict either party's right to develop, use or market products or services similar to or competitive with the other party; provided, however, that neither party is relieved of its obligations under the Agreement. Furthermore, provided that each party shall comply with its confidentiality obligations relating to the disclosure of Confidential Information to third parties as provided in the Agreement, each party may use the Residuals resulting from access to or work with the other party's Confidential Information that does not constitute the other party's trade secret. Neither party shall have any obligation to limit or restrict the assignment of its employees or other resources or to pay royalties or account in any way for any work resulting from the use of Residuals.

## 12. Governing Law, Consent to Jurisdiction

The validity, interpretation and enforcement of the Agreement (and any dispute or claim relating to it, or its formation, existence, construction, performance or termination) will be governed by and construed in accordance with the laws of Spain without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. All disputes or claims arising out of or relating to the Agreement or its subject matter will be submitted to the exclusive jurisdiction of the courts of the city of Madrid and each party irrevocably consents to such jurisdiction and waives all objections to this venue.

### 13. Miscellaneous

#### 13.1 Headings, Interpretation

Headings to the sections of the Agreement are for convenience only and shall not have any effect on construction and interpretation of the Agreement. No provision shall be construed adversely to a party solely on the ground that the party was responsible for the preparation of the Agreement or that provision. In the Agreement, references to "includes," "including," "including but not limited to," "including without limitation" and words or phrases of similar import shall be deemed to have the same meaning and the words "includes(s)" and "including" shall not be deemed to be terms of limitation but rather be deemed to be followed by the words "without limitation".

#### 13.2 Relationship Between the Parties, Subcontracting

In all matters relating to the Agreement, Customer and Liferay shall act as independent contractors. Nothing in the Agreement or related to Liferay's performance of any Order Form will be construed to create an employment or agency relationship or a partnership between Customer (or any Customer personnel) and Liferay (or any Liferay personnel). Each party will be solely responsible for supervision, direction, control and payment of its personnel, including applicable taxes, deductions, other payments and benefits. Liferay may subcontract Services under an Order Form to third parties or its Affiliates without the approval of Customer; provided, however, that (i) subcontractors agree to protect Customer Confidential Information subject to terms at least substantially similar with Section 9, and (ii) Liferay remains responsible to Customer for performance of its obligations hereunder. Neither party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party, or to represent the other party as agent, employee or in any other capacity. Nothing herein shall oblige parties to enter into any further agreement(s) with each other.

#### 13.3 Assignments

The Agreement is binding on the parties to the Agreement, and other than the rights conferred on Business Partners in Sections 4.1 and 5.1, nothing in the Agreement or in any Order Form grants any other person or entity any right, benefit or remedy of any nature whatsoever, except for the parties' Affiliates as expressly provided in the Agreement. Neither party may assign, novate, transfer or otherwise dispose of any of its rights or obligations under the Agreement and/or any Order Form without the other party's prior written consent which shall not be unreasonably withheld, delayed or conditioned; the party required to give its consent may however attach reasonable conditions to its consent. Either party may, upon written notice to, and without the prior approval of, the other party, (i) assign or novate the Agreement to an Affiliate as long as the Affiliate has sufficient credit to satisfy its obligations under the Agreement and the scope of the Services is not affected; and, (ii) assign or novate the Agreement pursuant to a merger or a sale of all or substantially all of such party's assets or shares, and in each case (i) or (ii) provided that (a) the assigning or novating party provides the other party with a written confirmation of the assignment or novation of all rights and obligations under the Agreement signed by both the assigning party and the assignee and (b) if the assignment is to a competitor of Liferay, written consent from Liferay shall be required. Any assignment in violation of this Section 13.3 is void. Each party must do all things reasonably necessary (including executing further documents) to give effect to an assignment or novation pursuant to this Section 13.3.

#### 13.4 Dispute Resolution

Each party agrees to give the other a written description of any problem(s) that may arise and to make a good faith effort to amicably resolve any such problem before commencing any proceeding. Notwithstanding the foregoing, either party may take any action reasonably required to protect such party's rights including temporary restraining order(s) or preliminary or permanent injunctive relief. Except for claims for Fees, Taxes and expenses under the Agreement and interest thereon, no claim or action, regardless of form, arising out of the Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued.

#### 13.5 Notices

All notices permitted or required under the Agreement shall be in English or Spanish, in writing and shall be delivered in person, by certified or registered post, by other nationally recognized overnight delivery service or electronic mail. Notices shall be deemed received the day of personal delivery, or in relation to transmission by electronic mail, at the time at which the notice enters an information system which is under the control of the recipient or five (5) days after deposit in the post or with a nationally recognized overnight delivery service. Customer shall direct all notices to Liferay under the Agreement to the following address: Liferay, S.L., Attn: Legal Department, Paseo de la Castellana 280, planta 1ª, modulo B, 28046, Madrid, Spain; E-mail: legal@liferay.com. Unless otherwise specified on an Order Form, all notices permitted or required under the Agreement from Liferay to Customer shall be addressed to the Customer's bill-to address as specified in an Order Form which may be updated from time to time by notice from Customer to Liferay as provided in this Section.

#### 13.6 Assistance

If and to the extent that Customer agrees in an Appendix or an Order Form to provide Liferay access to Customer Resources as reasonably required by Liferay in order to provide any Services, Customer understands and agrees that (i) the completeness, accuracy of, and extent of access to, any Customer Resources provided to Liferay may affect Liferay's ability to provide such Services, and (ii) if reasonable access to Customer Resources is not provided, Liferay will be relieved from providing those Services dependent upon such access. Customer will obtain any third party consents necessary to grant Liferay access to the Customer Resources that is subject to the proprietary rights of, or controlled by, any third party, or which is subject to any other form of restriction upon granting access to the Customer Resources. In the event that Customer fails to fulfill its obligations under an applicable Appendix or Order Form in a timely manner, and this failure adversely impacts the provision of Services, Liferay will be entitled to appropriate relief, including adjusting the timing of its delivery of applicable Services.

#### 13.7 Force Majeure

Neither party shall be liable to the other for failure or delay in the performance of a required obligation under the Agreement and/or Order Form if such failure or delay is caused by acts of God, wars, riots, strikes, fire, terrorist acts, flood, explosion, failure or diminishment of power or of telecommunications or data networks or services, earthquake or other natural disaster, government regulation, or other similar cause beyond such party's reasonable control (each, a "Force Majeure Event"); provided that such party gives prompt written notice of such condition and resumes its performance as soon as reasonably possible. If a Force Majeure Event continues for more than ninety (90) days continuously after the commencement of the Force Majeure event, either party may terminate the affected Order Form and/or the Agreement immediately by giving written notice to the other party and Liferay shall refund to Customer any pre-paid and unused Fees.

### 13.8 Good Business Practices

Each of the parties agrees that (i) it has not and will not, in connection with the formation or performance of the Agreement, engage in any illegal, unfair, deceptive, or unethical business practices whatsoever, including, but not limited to, any act that would constitute a violation of the relevant sections of the Spanish Criminal Code, the U.S. Foreign Corrupt Practices Act or the U.K. Bribery Act or any similar anti-corruption or bribery laws in any jurisdiction and (ii) it will comply with all applicable employment and occupational health and safety laws and regulations, including those related to employment practices, wages, and worker classification and it will comply with all applicable tax and social security laws as to its employees or contractors.

### 13.9 Export Compliance

Liferay may supply Customer with technical data that is subject to export control restrictions. Liferay will not be responsible for compliance by Customer with applicable export obligations or requirements for this technical data. Customer agrees to comply with all applicable export control restrictions. If Customer breaches this Section 13.9 or the export provisions of an applicable End User License Agreement, or any provision referencing these sections, Liferay may immediately terminate the Agreement including any applicable End User License Agreements and/or the applicable Order Form and its obligations thereunder without any liability to Customer. Customer shall indemnify Liferay, including its officers, directors and agents from all losses and liabilities (including reasonable attorneys fees and court costs) arising from Customer's breach of its obligations under this section.

### 13.10 Personal Data

The parties acknowledge and agree that except for Business Contact Information as defined in Section 13.11 and unless otherwise specified in an Appendix, Customer's use of the Services and Liferay's ordinary performance of the Services do not, as of the Effective Date, require a party to provide, disclose or give access to any Personal Data (as defined below) to the other party. For so long as and to the extent that a disclosure by a party to the other party of Personal Data is not required, the parties will take all reasonable steps to avoid any unnecessary disclosure of Personal Data to the other party through use of the Services or in any other manner. Unless otherwise specifically agreed by the parties in writing, the parties agree that each party is solely liable for all obligations, including without limitation, confidentiality and data protection and privacy obligations and restrictions, imposed by applicable law, regulation or court order applicable to its respective Personal Data. Where a party provides Personal Data to the other party in connection with the Agreement, such party warrants that it has obtained all the relevant consents to enable it to disclose that information to the other party. If a party should disclose any Personal Data with or without the relevant consents, to the other party, regardless of whether such disclosure is intentional or inadvertent, such party shall promptly notify the other party of such disclosure and the receiving party will treat the Personal Data in accordance with applicable law and as otherwise agreed between the parties in writing.

As used in this Section, "**Personal Data**" means any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means. Further, Personal Data includes information: (i) that directly identifies an individual (e.g., name, address, social security number or other identifying number or code, telephone number, email address, etc.) or (ii) that identifies specific individuals in conjunction with other data elements, i.e., indirect identification. (These data elements may include a combination of gender, race, birth date, geographic indicator, and other descriptors).

### 13.11 Business Contact Information

Notwithstanding Section 13.10, above, each party agrees to allow the other party and its respective Affiliates to store and use business contact information provided by the disclosing party to the receiving party, including names, business phone numbers, and business e-mail addresses ("Business Contact Information") anywhere it does business. Such Business Contact Information will be processed and used only in connection with the parties' business relationship under the Agreement and in accordance with applicable law, and may be transferred worldwide between the receiving party, its Affiliates, subcontractors, Business Partners, and assignees of such party and its subsidiaries for uses consistent with the parties' business relationship resulting from the Agreement.

### 13.12 Severability

If any provision or provisions of the Agreement and/or any Order Form shall be held to be invalid, illegal or unenforceable in whole or in part by any court of competent jurisdiction or other competent authority, the Agreement and/or any affected Order Form will continue to be valid and enforceable as to the other provisions and/or the remainder of the affected provision(s). The affected provision(s) will be deemed amended to the minimum extent necessary to render it valid and enforceable in conformity with applicable law and in both cases (i) and (ii) subject to parties' intent as expressed in the Agreement and/or the Order Form.

### 13.13 Waiver

The delay or failure of either party to exercise any rights under the Agreement will not constitute or be deemed a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the party against whom such waiver is sought to be enforced.

### 13.14 Entire Agreement

The Agreement, including all Order Forms, sets forth the entire agreement between the parties and supersedes prior proposals, agreements and representations between them, whether written or oral, relating to the subject matter contained herein. Each party acknowledges that in entering into the Agreement it has not relied on any representation, warranty or collateral contract or other assurance except those set out therein. The Agreement and each Order Form may be changed only if agreed to in writing and signed by an authorized signatory of each party. Any claim relating to the provision of the Services by Liferay, its Affiliates (to the extent they are acting on behalf of Liferay) or their respective personnel will be made against Liferay alone.

### 13.15 Counterparts and Facsimile Signature

In the event that the Agreement or any Order Form is executed with signatures, the Agreement or the Order Form(s) may be executed in counterparts, each of which will be deemed an original and all of which will constitute one and the same document. Facsimile and electronic copies of signatures shall have the same effect as originals. If a party elects to sign the Agreement or any Order Form electronically, it expressly acknowledges and agrees that such electronic signature is the legal



equivalent of, and has the same force and effect as, a manual signature. The parties agree to exclude the application of the obligations to provide information prior to the commencement of the contracting procedure, and after the conclusion of the contract, contained in the Law on Information Society Service and Electronic Commerce.

**APPENDICES**

**Unless otherwise specified in the applicable Order Form, the Appendices are available at: [www.liferay.com/legal](http://www.liferay.com/legal)**