



## EULA: LIFERAY DEVELOPER TOOLS AND CERTAIN OTHER WORKSTATION AND CLIENT-SIDE SOFTWARE INSTALLATIONS

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### 1. Definitions

“**Affiliates**” means in the case of a company, 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.

“**Australian Consumer Law**” means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as amended or replaced from time to time.

“**Business Partner**” means an organization authorized by Liferay, directly or indirectly, to promote, market, sell, resell, distribute and support the Software.

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“**Liferay**” means Liferay Australia Pty Ltd with a principal place of business at Level 18, 227 Elizabeth Street, Sydney NSW 2000.

“**Non-Excludable Obligations**” has the meaning given in Section 8.

“**Third Party Software**” means software program, computer code, programming libraries, application programming interfaces, or other materials, (i) the intellectual property rights of which are not owned by Liferay or its Affiliates and (ii) which is licensed under terms and conditions outside the scope of this EULA as further specified in Section 2 below.

“**You**” means, as applicable, the individual or the entity on whose behalf the individual is acting and “**Your**” shall be construed accordingly.

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

##### 5.1 Exclusion of Liability

EXCEPT IN RELATION TO THE NON-EXCLUDABLE OBLIGATIONS, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL LIFERAY OR ANY OF ITS AFFILIATES HAVE ANY LIABILITY TO YOU OR YOUR AFFILIATES, UNDER ANY LEGAL OR EQUITABLE THEORY, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), PRODUCT LIABILITY, STATUTE OR OTHERWISE, FOR OR IN CONNECTION WITH:

(I) ANY ECONOMIC LOSSES, 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 OF DATA OR INTERRUPTION OF SERVICES, LOSS OF ANTICIPATED SAVINGS OR BENEFITS, OR COVER COSTS 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 ANY MALFUNCTIONS, REGULATORY NON-COMPLIANCE, DELAYS, PRODUCT LIABILITY, RELIANCE, BREACH OF ANY IMPLIED DUTY; 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.

IN EACH CASE (I) THROUGH (III), WHETHER OR NOT FORSEEABLE; EVEN IF LIFERAY, ITS AFFILIATES OR A BUSINESS PARTNER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, COSTS OR EXPENSES.

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FOR ALL EVENTS AND CIRCUMSTANCES, EXCEPT IN RELATION TO THE NON-EXCLUDABLE OBLIGATIONS AND OTHERWISE TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LIFERAY'S AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS EULA, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE WILL NOT EXCEED FIFTY AUSTRALIAN DOLLARS (AU\$50.00).

##### 5.3 Allocation of Risk

THE PROVISIONS OF SECTION 4 AND THIS SECTION 5 ALLOCATE THE RISKS UNDER THIS EULA BETWEEN LIFERAY AND YOU. THIS ALLOCATION IS AN INTRINSIC PART OF, AND THE BASIS OF, THE BARGAIN BETWEEN YOU AND LIFERAY AND WITHOUT SUCH ALLOCATION, LIFERAY WOULD NOT HAVE ENTERED INTO THIS EULA. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS CONTAINED IN SECTIONS 4 AND 5 APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY (INCLUDING ANY LIMITED OR EXCLUSIVE REMEDY) PROVIDED FOR IN THIS EULA FAILS IN ITS ESSENTIAL PURPOSE.

#### 6. Export Control

You: (i) acknowledge and agree that the Software and its components are subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("EAR"); (ii) represent and warrant that You are not located in any country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR; (iii) shall not export, re-export, divert, or transfer the Software to any prohibited destination or to any party who has been prohibited from participating in US export transactions by any federal agency of the US government; (iv) shall not use or transfer the Software for use in connection with the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, or sounding rockets or unmanned air vehicle systems; and (v) acknowledge and agree that if You export, re-export, or transfer the Software to eligible recipients, then You shall: (a) strictly comply with all applicable export control laws, (b) obtain all necessary licenses and permits, including those required by the EAR; and (c) submit all reports required by the Commerce Department's Bureau of Industry and Security, which include the name and address (including country) of each transferee. Liferay will not have any liability for the failure to obtain a U.S. export license to export the Software. You further acknowledge and agree that countries including the United States may restrict the import, use, or export of encryption products (which may include the Software)

and agree that You shall be solely responsible for compliance with any such import, use, or export restrictions. You shall indemnify Liferay, including its officers, directors and agents from all losses and liabilities (including reasonable attorneys fees and court costs) arising from any breach of Your representations, warranties or obligations under this Section.

#### **7. General**

If any provision of this EULA is held to be unenforceable, such ruling shall not affect the enforceability of the remaining provisions. 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 parties' intent as expressed in this EULA. This EULA shall be governed by the laws of Australia, without regard to any conflict of laws provisions and any disputes arising out of or in relation to this EULA will be subject to the exclusive jurisdiction of the Australian courts. The rights and obligations of the parties to this EULA shall not be governed by the United Nations Convention on the International Sale of Goods.

#### **8. Australian Consumers**

This Section 8 applies if You obtain the Software in Australia. If a supply under this EULA is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law, nothing contained in this EULA excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would contravene that statute or cause any term of this EULA to be void ("Non-Excludable Obligations"). To the extent permitted by law, Liferay's liability in relation to Non-Excludable Obligations is limited to (at Liferay's option): (i) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and (ii) in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.