

Master Subscription and Support Agreement

THIS AGREEMENT IS BETWEEN LIFERAY AUSTRALIA PTY LTD. ("PROVIDER"), AN AUSTRALIAN CORPORATION, AND THE LEGAL ENTITY SPECIFIED IN THE ORDER FORM ("COMPANY") THAT COMPLETES AND SUBMITS AN EXECUTED ORDER FORM (AS DEFINED BELOW) TO PROVIDER.

PLEASE READ THIS MASTER SUBSCRIPTION AND SUPPORT AGREEMENT ("AGREEMENT"), WHICH GOVERNS THE ACQUISITION AND USE OF PROVIDER TECHNOLOGY AND SERVICES FROM PROVIDER. BY SUBMITTING AN EXECUTED ORDER FORM, COMPANY ACCEPTS AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

AN INDIVIDUAL ACTING ON BEHALF OF COMPANY HEREBY REPRESENTS AND WARRANTS THAT HE OR SHE HAS THE REQUISITE AUTHORITY TO BIND SUCH LEGAL ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY OR IF COMPANY DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT ACCEPT THIS AGREEMENT AND COMPANY MAY NOT USE THE PROVIDER TECHNOLOGY AND SERVICES.

1. DEFINITIONS

"Affiliate" means any entity controlling, controlled by or under common control with a party. The terms "controlled", "controlling" and "control" refer to ownership of at least fifty percent (50%) of the shares or voting rights in an entity and/or the right to appoint the management of an entity.

"Business Partner" means an organization with which Provider has entered into an agreement to promote, market and support certain Provider Technology and Services.

"Backup Purposes" means using the Provider Technology in a backup environment, generally for the purpose of disaster recovery and/or serving as a backup in case a live production server fails.

"Core" means an independent execution unit on a processor package that handles computational activities one program thread at a time.

"Customized Solution" means any software that extends the functionality of and is bundled with the Provider Technology.

"Developer License" means a license to use Provider Technology, limited to a certain number of connections, restricted for use only on a developer workstation.

"Developer Purpose" means using the Provider Technology as necessary to develop plugins and/or applications and extend the functionality of the Provider Technology.

"Documentation" means all user manuals and technical specification documentation generally made available by Provider, but excluding any manuals or books published by or together with a third party.

"End User" means the person using the Customized Solution.

"Fees" means the fees for the license(s) and/or Services as specified in an Order Form.

"GST" means the goods and services tax assessed and payable under the GST Act.

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth.).

"Intellectual Property Rights" means all current and future worldwide intellectual property rights including, without limitation, all patents, trademarks and service marks, copyrights, mask work rights, trade secrets and know-how, and applications and registrations for any of the foregoing.

"JVM" means a java virtual machine, which is a program that executes other programs, typically Java bytecode.

"Licensed Purpose" means the purpose of use permitted for a particular Licensed Server, either Production Purposes, Non-Production Purposes, or Backup Purposes, in each case as specified in an applicable Order Form.

"Licensed Server" means a single Server, to which additional JVMs and Cores may be added as specified in an Order Form, with a license to execute or run the Provider Technology and authorized to receive Services.

"Marketplace App" means any software application that is made available through the Liferay Marketplace located at liferay.com/marketplace and whose use is governed by the terms and conditions of its applicable agreement.

"Non-Production Purposes" means using the Provider Technology in a non-production environment, excluding developer workstations, generally for the purposes of dev-integration, testing, quality assurance, staging, and user acceptance testing.

"Order Form" means a document, which consists of a description of Company's order for license(s) and/or Services and Fees, that expressly states that it is governed by the terms and conditions of this Agreement and may be in the form of Provider's order form, Business Partner's order form, or a Company issued purchase order accepted by Provider.

"Production Purposes" means using the Provider Technology in a production environment, using live data, generally for the purpose of providing a service to its End Users.

"Provider Technology" means the computer software, excluding Marketplace Apps, whose Intellectual Property Rights are owned by Provider and its Affiliates, specified in an Order Form and licensed to Company under the terms of this Agreement, including any releases provided as part of the Services and all modifications, additions, and further enhancements thereto delivered by Provider.

"Server" means a physical machine or virtual machine, limited to one (1) JVM and eight (8) cores or fewer.

"Services" means the Subscription Services and/or Support Services provided by Provider to Company.

"Services Term" means the term for which Services are provided to Company for a particular Licensed Server, as specified in the Order Form.

"Source Code" means the human-readable version of the Provider Technology that, when compiled, generates machine-readable executable code.

"Subscription Services" means the subscription to receive access to releases of the Provider Technology, as further defined in Exhibit A, Article 2.

"Support Services" means the technical support services for the Provider Technology that is provided by Provider, Provider's Affiliates, and/or its third party contractors under this Agreement, as further defined in Exhibit A, Article 3.

"Support Services Level" means the level of Support Services to be provided by Provider to Company under this Agreement, as further defined in Exhibit A and as specified in an Order Form.

"Third Party Technology" means any software program, computer code, programming libraries, application programming interfaces, or other materials, whose Intellectual Property Rights are not owned by Provider or its Affiliates but provided to Company.

2. LICENSE AND RESTRICTIONS; BUSINESS PARTNER

2.1 License

Subject to the terms and conditions of this Agreement, and provided that Company has paid all applicable Fees to Provider (or a Business Partner, if applicable), Provider grants Company a perpetual, non-exclusive, non-sublicensable, non-transferable license for an unlimited number of users, to use the Provider Technology (i) in accordance with the Documentation and the Licensed Purpose; and (ii) limited to the number of Licensed Servers. The Provider Technology is provided with certain Third Party Technology. Such Third Party Technology is licensed to Company under its applicable license terms and conditions and/or copyright notices found in the license file, Documentation, or other materials accompanying the Provider Technology or available on Provider's website.

Save for the licences granted under this Agreement, all rights, title and interest subsisting in the Provider Technology and Documentation (including, without limitation, Intellectual Property Rights, international treaty and other rights as applicable) remain the property of, and are vested in, the Provider.

2.2 Restrictions

Company may not (i) to a third party, transfer rights or usage to, sublicense, rent, lease or otherwise distribute the Provider Technology or Documentation except as provided herein; (ii) modify, loan, decompile, reverse engineer or disassemble or otherwise attempt to derive source code from any encrypted or encoded portion of the Provider Technology or Documentation, except as and only to the extent that any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing

terms governing use of any open source components included with the Provider Technology; (iii) remove or alter any product identification, proprietary, copyright or other notices contained in the Provider Technology; (iv) use any of the Services for any server that is not a Licensed Server; (v) use Developer Licenses for other than Developer Purposes. Except as permitted herein, any attempt to assign, transfer or sublicense the Provider Technology or Documentation to any third party will be void. Company may make any reasonable number of copies of the Provider Technology and Documentation for data archival purposes.

2.3 Business Partner

When Company purchases Provider Technology and Services through a Business Partner, Provider confirms that it is responsible for providing the Provider Technology and Services to Company under the terms of this Agreement. Provider is not responsible for (a) the actions of Business Partners, (b) any additional obligations Business Partners have to Company, or (c) any products or services that Business Partners supply to Company under any separate agreement between Business Partner and Company.

3. FEES AND PAYMENTS

3.1 License and Fees

Company shall pay to Provider the Fees in the currency specified in an applicable Order Form and in accordance with the payment terms set forth in this Agreement. Company shall be responsible for all currency conversion fees, wire transfer fees and similar bank payment charges ("Transaction Fees"). Payment of Fees shall be made net of all Transaction Fees.

3.2 Additional Orders

Additional orders may be made from time to time under the terms of this Agreement by Company through an Order Form, although Provider has no obligation whatsoever to accept such order. Fees for additional orders shall be assessed at the then current rate. The parties agree that the terms of this Agreement will govern all purchases and use by Company of Provider Technology and Services unless otherwise agreed by the parties in writing.

Provider and Company agree that Affiliates of Company may acquire Provider Technology and Services from Provider or Provider's Affiliates by entering an Order Form with Provider or a Provider Affiliate that is governed by the terms and conditions of this Agreement.

3.3 Payment Terms

Unless stipulated otherwise in the associated Order Form, all Fees due under this Agreement are payable thirty (30) days from receipt of a correct invoice. Except as otherwise set forth in this Agreement, all Fees paid to Provider are non-refundable.

Company will reimburse Provider for all costs (including reasonable attorney's fees) associated with collecting delinquent or dishonored payments by Company that are more than thirty (30) days past due. At Provider'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 Company will thereafter be applied first to accrued interest and then to the principal unpaid balance. If payment of undisputed invoices is not current, Provider may suspend performing Services and shall provide Company with written notice of nonpayment. If Company does not remit payment within thirty (30) days from said notice, Provider may, at its sole discretion, terminate the applicable Order Form or this Agreement.

3.4 Taxes, GST

Fees are exclusive of, and Company is responsible for, shipping costs, duties and taxes at the rate and in the manner for the time being prescribed by law, which will be added to the amount payable by Company, and must be paid by the Company, if applicable). This paragraph does not apply to GST.

Words or expressions used in this Article, and this Agreement, which are defined in the GST Act, have the same meaning as in the GST Act.

Any consideration or amount to be paid or provided for a supply made under or in connection with this agreement, unless specifically described as GST inclusive, does not include GST payable on that supply.

If a party (**Supplier**) makes a supply under or in connection with this agreement on which GST is imposed (not being a supply the consideration for which is specified as **GST inclusive**):

- (a) the consideration payable or to be provided for that supply but for this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Provider on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

3.5 Business Partner Transactions

Articles 3.1, 3.3 and 3.4 shall only apply to direct transactions between Provider and Company. In the event that Company acquires Provider Technology and/or Services from a Business Partner, Articles 3.1, 3.3 and 3.4 will not apply but the applicable fees, payment terms and taxes will be as agreed separately between Business Partner and Company.

3.6 Rights to Audit License Usage

Upon request, Company will certify in writing that it has paid the Fees required under this Agreement. Provider will have the right, with reasonable notice, during normal business hours, at Provider's sole expense (except as set forth herein), and in as non-disruptive a manner as reasonably possible, to verify Company's compliance with its payment obligations by having Provider's representatives conduct an audit of Company's usage of the Provider Technology. If Provider believes that the fees paid by Company are not sufficient to satisfy the obligations of Company hereunder, Provider may appoint a mutually acceptable independent auditor to conduct an audit, and Company agrees to pay any fees outstanding as documented by the auditor not later than thirty (30) days after the auditors' report is made available to Company. If the fees paid prior to the audit equal less than ninety percent (90%) of those which were actually due and payable as of the date of the audit, Company shall reimburse Provider the costs incurred for that audit. Any auditor appointed under this Article must agree in writing to the confidentiality terms of this Agreement prior to being permitted to perform such audit. Any such audit may not be conducted more than two (2) times during each twelve (12) month period and may not continue for more than ten (10) business days unless otherwise agreed in writing by Company.

4. TERM AND TERMINATION

4.1 Term and Termination of the Agreement

This Agreement shall become effective as of the Order Form Acceptance Date (as defined below) and shall remain in effect until no Order Form is found to be in effect for greater than thirty (30) consecutive days. Termination of this Agreement will not operate to terminate any other Order Form and the terms and conditions of this 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 this Agreement and until such time as the applicable Order Form expires or is terminated in accordance with Article 4.2 below.

4.2 Term and Termination of Order Form

An Order Form shall become effective on the date of last signature on a fully executed Order Form (in the case of a purchase order, the date the purchase order is explicitly accepted by Provider) ("Order Form Acceptance Date") and shall remain in effect until all Services Terms and any Renewal Terms for the Order Form have expired or been terminated. A Services Term begins on the start date specified in the Order Form and continues for the term specified therein. Thereafter, a Services Term shall automatically renew for successive one (1) year terms (each, a "Renewal Term") immediately following the end of the Services Term, unless either party provides written notice of non-renewal at least thirty (30) days prior to the end of the Services Term or a Renewal Term.

If a party materially breaches the terms of an Order Form or this Agreement (other than failure to pay a fee) and either that breach is incapable of remedy or the defaulting party fails to correct the breach within ninety (90) days following written notice by the non-defaulting party to the defaulting party specifying the breach then the non-defaulting party may terminate the applicable Order Form or this Agreement, after expiration of such cure period, upon written notice of termination to the defaulting party. The termination of an individual Order Form will not terminate any other Order Form or this Agreement unless otherwise specified in the written notice of termination.

Either party may terminate an Order Form, this Agreement, and any other Order Form(s) in existence at the time with immediate effect by written notice to the other party if the other party has been declared bankrupt or if a moratorium of payments has been declared, or if any proceeding of bankruptcy, insolvency or other law for the relief of debtors, including the appointment of any receiver or trustee or assignment for the benefit of creditors shall be instituted.

4.3 Termination Generally

Either party may terminate this Agreement or any or all Order Form(s) with immediate effect by written notice to the other party if (i) a liquidator, receiver, receiver and manager, administrator, mortgagee in possession or other external insolvency administrator is appointed to the assets or undertaking of the other party; (ii) the other party is (or is deemed to be) unable to pay its debts as and when they fall due; (iii) the other party ceases to conduct business; or (iv) the other party enters into a composition or arrangement with its creditors in respect of the payment to those creditors of its debts.

4.4 Reinstatement Fees

In the event Company terminates Services or does not renew Services within thirty (30) days after the expiration of a Services Term or Renewal Term, reinstatement fees may apply under Provider's then current policies if Company reinstates Services.

4.5 Survival

The parties' rights and obligations under Articles 1 ("Definitions"), 2 ("License and Restrictions"), 3.4 ("Taxes, GST"), 4 ("Term and Termination"), 5 ("Representations and Warranties"), 7 ("Limitation of Liability"), 8 ("Grant to Provider") and 10 ("Miscellaneous") shall survive final expiration or termination of this Agreement.

5. REPRESENTATIONS AND WARRANTIES

5.1 Statutory Warranty

To the extent that Company acquires goods or services from Provider as a consumer within the meaning of the Australian Consumer Law, Company may have certain rights and remedies (including, without limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by agreement.

Nothing in this Article 5.2 operates to exclude, restrict or modify the application of any implied condition or warranty, 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:

- (a) contravene that statute; or
- (b) cause any term of this agreement to be void,

(each a Non-excludable Obligation).

In relation to Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which Provider's liability is not limited under this Agreement or any Order Form), Provider's liability to Company for a failure to comply with any Non-excludable Obligation is limited to:

- (a) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
- (b) 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.

5.2 Limited Warranty

Provider represents and warrants that: (i) the Services will be performed in a professional and workmanlike manner by qualified personnel; (ii) it has the authority to enter into this Agreement with Company; (iii) to Provider's knowledge, Provider Technology does not, at the time of delivery to Company, include malicious code with the purpose of adversely affecting the operation, security or integrity of a system; and (iv) the Provider Technology is presently not subject to any claim for infringement, and Provider is not aware of any specific facts upon which such a claim could reasonably be based.

5.3 Disclaimer of Warranty

EXCEPT AS STATED UNDER ARTICLES 5.1 AND 5.2, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PROVIDER TECHNOLOGY AND SERVICES AS PROVIDED BY PROVIDER ARE PROVIDED AND LICENSED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT 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, COMMON LAW, COURSE OF DEALING, TRADE USAGE OR OTHERWISE) ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. PROVIDER DOES NOT GUARANTEE THAT THE USE OF THE PROVIDER TECHNOLOGY OR SERVICES WILL NOT BE INTERRUPTED OR ERROR FREE, COMPLY WITH REGULATORY REQUIREMENTS, OR THAT PROVIDER WILL CORRECT ALL SOFTWARE ERRORS. FOR THE BREACH OF THE WARRANTIES SET FORTH IN ARTICLE 5.1, COMPANY'S EXCLUSIVE REMEDY, AND PROVIDER'S ENTIRE LIABILITY, WILL BE THE REPERFORMANCE OF DEFICIENT SERVICES, OR IF PROVIDER CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, COMPANY 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.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING DISCLAIMER, THE PROVIDER TECHNOLOGY AND SERVICES ARE NOT SPECIFICALLY DESIGNED, MANUFACTURED OR INTENDED FOR USE IN (A) THE PLANNING, CONSTRUCTION, MAINTENANCE, CONTROL, OR DIRECT OPERATION OF NUCLEAR FACILITIES, (B) AIRCRAFT NAVIGATION, CONTROL OR COMMUNICATION SYSTEMS, WEAPONS SYSTEMS, OR (C) DIRECT LIFE SUPPORT SYSTEMS. COMPANY AGREES THAT IT IS SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED FROM THE USE OF THE PROVIDER TECHNOLOGY AND SERVICES.

6. INTELLECTUAL PROPERTY CLAIMS

6.1 Injunctive Relief

If an injunction is sought, obtained or in Provider's opinion is likely to be sought or obtained against Company's use of the Provider Technology and/or Documentation as a result of a third party infringement claim, Provider will, at its expense and within commercially feasible means, (i) replace, with functionally equivalent software, or modify the affected Provider Technology so that it does not infringe; or (ii) obtain the rights necessary for Company to continue to use the Provider Technology consistent with this Agreement or (iii) terminate this Agreement and, if Company then returns the affected Provider Technology, Provider will provide Company a pro rata refund based upon the time period remaining under the applicable Order Form.

6.2 Legal Defense and Damages

If an unaffiliated third party initiates a legal action against Company alleging that Company's use of the Provider Technology and/or Documentation directly infringes the third party's Intellectual Property Rights (such action, a "Claim"), and Company has complied with the terms of this Agreement then, Provider will (i) defend Company against the Claim and (ii) pay costs, damages and/or attorneys fees that are included in a final judgment against Company (without right of appeal) or in a settlement approved by Provider that are attributable to Company's use of the Provider Technology and/or Documentation, provided that Company (i) has not terminated Services with Provider, (iii) notifies Provider promptly, but in no event later than ten (10) days of receipt of any Claim, (iv) provides Provider with the right to control and conduct the defense of the Claim with counsel of its choice and to settle such Claim at Provider's sole discretion, and (v) cooperates with Provider in the defense of the Claim.

6.3 Exclusions

Provider shall have no obligation under this Article 6 for any third party claim of infringement regarding the Provider Technology and/or Documentation based upon (i) Provider Technology and/or Documentation that has been modified in any way, except as permitted under this Agreement; (ii) Company's combination, operation, or use of the Provider Technology with any programs or equipment not provided by Provider; (iii) Provider's compliance with any designs, specifications or instructions provided by Company; (iv) acts, omissions or circumstances constituting a breach of this Agreement; (v) use by Company after notice by Provider to discontinue use of all or a portion of the Provider Technology; (vi) a Company's claim or lawsuit against a third party or (vii) Company's failure, within a reasonable time frame, to implement any replacement or modification of Provider Technology provided by Provider if, as of the date of a Claim or threatened Claim, the infringement would not have occurred had Company implemented said replacement or modification. Article 6 constitutes the entire liability of Provider and Company's sole and exclusive remedy with respect to any third party claims of infringement of Intellectual Property Rights.

7. LIMITATION OF LIABILITY

EXCEPT FOR COMPANY'S OBLIGATIONS UNDER ARTICLE 2 AND ITS PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, AND EITHER PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 10.3, WITH RESPECT TO DAMAGES ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT INCLUDING ALL ORDER FORMS, THE PROVIDER TECHNOLOGY, SERVICES OR DOCUMENTATION, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY, UNDER ANY LEGAL OR EQUITABLE THEORY, WHETHER CONTRACT, TORT, PRODUCT LIABILITY, RELIANCE, BREACH OF ANY IMPLIED DUTY, OR OTHERWISE, FOR (A) ANY LOSS OF REVENUE, LOSS OF GOODWILL, 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, COVER OR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL OR PUNITIVE DAMAGES, LOSSES, COSTS OR EXPENSES; EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, COSTS OR EXPENSES, OR IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; OR (B) ANY AMOUNTS IN EXCESS OF THE FEES RECEIVED BY PROVIDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT OR OMISSION GIVING RISE TO THE LIABILITY WITH RESPECT TO THE PARTICULAR ITEMS (WHETHER PROVIDER TECHNOLOGY, SERVICES OR OTHERWISE) GIVING RISE TO LIABILITY UNDER THE MOST APPLICABLE ORDERING DOCUMENT.

The provisions of this Article allocate the risks under this Agreement between Provider and Company and are an intrinsic part of the bargain between the parties. The fees provided for in this Agreement reflect this allocation of risks and the limitation of liability specified herein.

8. GRANT TO PROVIDER

Neither party will, without the other party's prior written consent, make any news release or public announcement of this Agreement, its value, or its terms and conditions. Notwithstanding the foregoing, Provider may use Company's name and logo, consistent with Company's trademark policies, on customer lists, which may be made publically available on Provider's website, and may make any news release or public announcement of Company's use of Provider Technology provided that it was already made public knowledge.

9. USE OF SUPPORT SERVICES

For every unique Customized Solution, Company must purchase the same Support Services Level for all Licensed Servers. For the avoidance of doubt, for a unique Customized Solution, Company may not (i) purchase a Platinum Support Services Level for one Licensed Server used for Production Purposes and Gold Support Services Level for any additional Licensed Servers used for Production Purposes; or (ii) purchase a Platinum Support Services Level for one Licensed Server used for Production Purposes and a Gold Support Services Level for a Licensed Server used for Non-Production Purposes. During the term that Company is receiving Services from Provider for a Customized Solution, Company is required to purchase Services equal to the total number of Servers that Provider Technology is deployed, installed, used, or executed on for that Customized Solution.

10. MISCELLANEOUS

10.1 Headings to articles in this Agreement are for convenience only and shall not have any effect on construction and interpretation.

10.2 No provision shall be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision

10.3 Nondisclosure

It is expected that the parties may disclose to each other certain information that may be considered confidential. Confidential information means: (a) the Source Code; (b) confidential information disclosed by either party in writing that is marked as confidential at the time of disclosure; (c) confidential information disclosed by either party in any other manner that is identified as confidential at the time of disclosure and summarized and designated as confidential in a written memorandum delivered to the receiving party within thirty (30) days of the initial disclosure; (d) information that given its nature or the circumstances surrounding its disclosure, a reasonable person should have an expectation of confidentiality for; (e) all information relating to the provision of Services; (f) all information relating to the security arrangements of either party; and (g) all data owned or held by Company and stored on Provider Technology (jointly "Confidential Information").

Confidential Information shall not include information which: (i) is or becomes a matter of public knowledge through no fault of the receiving party; (ii) is or becomes available to the receiving party from a source other than the disclosing party, provided that such source was not known by the receiving party to be bound by a duty of confidentiality with respect to such information; (iii) is disclosed by the disclosing party to a third party without a duty of confidentiality; (iv) is independently developed by the receiving party without use of the Confidential Information of the other party; (v) is in the rightful possession of the receiving party without an obligation of confidentiality; or (vi) is disclosed by the receiving party with the disclosing party's prior written approval. In the event that pursuant to the requirements of a governmental agency or by operation of applicable statutory law or by order of a competent court or recognized stock exchange a party becomes legally compelled to disclose any of the other party's Confidential Information, the party required to make such disclosure shall provide the other party with prompt prior written notice of any such requirement so that the other party may seek a protective order or other appropriate remedy and/or waive compliance with the non-disclosure provisions of this Agreement. In the event that such protective order, other remedy or waiver is not obtained, the party required to make the disclosure shall furnish only that portion of the Confidential Information that such party, in the opinion of counsel, is legally required to disclose and shall exercise reasonable efforts to preserve for the remainder the confidentiality of the other party's Confidential Information.

Except as otherwise specified herein, the disclosing party shall retain all Intellectual Property Rights in any Confidential Information disclosed to the other party. The parties agree, during the term of a valid Order Form and for a period of two (2) years after termination or expiration of a valid Order Form, to hold each other's Confidential Information in confidence and to protect the disclosed Confidential Information of the other party by using the same degree of care to prevent the unauthorized use, dissemination or publication of the Confidential Information as they use to protect their own confidential information of a like nature but in any event no less than a reasonable degree of care. The parties agree not to make each other's Confidential Information available in any form to any third party except that third party subcontractors shall be permitted to exercise the licenses granted under this Agreement or to use each party's Confidential Information solely for the purpose of implementing this Agreement. Each party agrees to (i) restrict disclosure of the Confidential Information to those third parties and/or its employees who have a "need to know" such information in order to undertake their work with respect to this Agreement or otherwise to the benefit of the parties and have themselves an agreement with the receiving party sufficient to require them to treat the other party's Confidential Information in a manner materially similar as is set out herein (jointly the "Staff") and (ii) to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its Staff in violation of the provisions of this Agreement. Upon termination or expiration of this Agreement, except as necessary to give any existing Order Form effect or as otherwise required by law, both parties shall return or destroy all copies of the other party's Confidential Information furnished under this Agreement except any copies necessary to exercise the continuing rights specified in Article 4 ("Term and Termination") above. Each party will at all times be responsible for ensuring that its Staff retains the confidentiality of the other party's Confidential Information in accordance with this Agreement and each Party will indemnify the other party from and against any losses, costs or damages resulting from or arising out of a breach of this Article by any Staff of the indemnifying party.

Both parties agree that if either party breaches any of its obligations set forth in this Article, the other party may be irreparably harmed. As such, in addition to all other remedies which such party may have, it may be entitled to relief in equity without the necessity of proof of actual damage.

10.4 Governing Law and Jurisdiction

This Agreement and all matters arising out of or relating to this Agreement, will be governed by the substantive laws of Australia. Any legal action or proceeding relating to this Agreement will be instituted in a court in Sydney, Australia. Company and Provider agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding.

10.5 Assignment

Neither party may assign, transfer or otherwise dispose of any of its rights or obligations under this 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 and without the prior approval of the other party, (a) assign this Agreement to an Affiliate as long as the Affiliate has sufficient credit to satisfy its obligations under this Agreement and the scope of license to the Provider Technology or of the Services is not affected; and (b) assign this Agreement pursuant to a merger or a sale of all or substantially all of such party's assets or stock except where such merger or sale is to a competitor of Provider, in which case written consent from Provider shall be required. Any assignment in violation of this Article is void.

10.6 Notice

All notices permitted or required under this Agreement shall be in writing and shall be delivered in person, by certified or registered express mail, electronic mail, or facsimile. Notice shall be deemed received the day of personal delivery, or transmission by electronic mail or facsimile or five (5) days after deposit in the mail. Company shall direct all notices to Provider under this Agreement to the following address:

Liferay Australia Pty. Ltd.
Attn: Legal Department
L21, Tower 2 Darling Park
201 Sussex St Sydney NSW 2000
Australia
E-mail: legal@liferay.com
FAX: 02 8019 7070

All notices permitted or required under this Agreement from Provider to Company shall be addressed to the Company's Designated Contact at Company's address specified on an Order Form or as updated from time to time as provided pursuant to this Article.

10.7 Relationship Between the Parties

In all matters relating to this Agreement, Company and Provider shall act as independent contractors. Neither party will represent that it has any authority to assume or create any obligation, expressed 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.

10.8 Force Majeure

Neither party shall be liable to the other for failure or delay in the performance of a required obligation under this Agreement and/or Order Form if such failure or delay is caused by riot, fire, flood, explosion, earthquake or other natural disaster, government regulation, or other similar cause beyond such party's reasonable control, provided that such party gives prompt written notice of such condition and resumes its performance as soon as reasonably possible.

10.9 Export Compliance and Privacy

The Provider Technology provided to Company is subject to export control restrictions. As such, Company shall not export or re-export the Provider Technology to any country where such export is prohibited by U.S. laws and regulations and shall not, directly or indirectly, use, export or re-export the Provider Technology in such a way that it violates any export control laws or regulations of any government or government agency. Should Company decide to export the Provider Technology, Company shall be wholly responsible for its compliance with applicable export requirements and obligations for the Provider Technology. Should Company breach this Article, Company shall defend, indemnify and hold Provider and its suppliers harmless from and against any and all claims, suits, demands, actions, proceedings, judgments, penalties, fines, damages, losses, liabilities, costs and expenses (including, without limitation, reasonable legal and expert witness fees) arising from or relating to any and all violations of such laws or regulations by Company or any of its agents, officers, employees, directors or consultant and Provider may terminate this Agreement and/or the applicable Order Form and its obligations thereunder without liability to Company. Company acknowledges and agrees that to provide the Services, it may be necessary for Company information to be transferred between Provider, its Affiliates, Business Partners, and/or subcontractors, which may be located worldwide.

10.10 Severability

If any provision or provisions of this 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, this 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 parties' intent as expressed in this Agreement and/or the Order Form.

10.11 Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.12 No Waiver

The failure of any party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions. This Agreement may not be waived, except in writing by the Party granting the waiver.

10.13 Entire Agreement

This Agreement, including all exhibits hereto, and 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 this Agreement it has not relied on any representation, warranty or collateral contract or other assurance except those set out therein. This Agreement may be changed only if agreed to in writing and signed by an authorized signatory of each party. In the event of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit hereto or any Order Form, the terms of this Agreement shall prevail, provided however, that an Order Form may amend or override the terms and conditions of this Agreement only if (and limited to the extent) that the Order Form specifically identifies the provision(s) the parties intend to amend or override. For purposes of clarity, if a Company's purchase order is accepted by Provider, such acceptance is limited to the terms of the quantities, descriptions, Services, Fees, delivery schedule, and Services Terms, and any additional or different terms or conditions, or any other attempt by Company to vary in any degree any of the terms of this Agreement by such purchase order, shall be rejected by the parties and null and void. In the event both Provider's order form and Company's purchase order are executed by Company and presented to Provider for a specific order, the terms of Provider's order form shall prevail.

**EXHIBIT A
SUBSCRIPTION AND SUPPORT
STANDARD TERMS AND CONDITIONS**

1. DEFINITIONS

“Acknowledge Receipt Time” means the time by which Provider must respond to the Incident reporter acknowledging receipt of the Incident. Acknowledge Receipt Times are only supported in response to an Incident that is submitted to Provider via phone. Incidents submitted via the web shall have a one (1) Business Day Acknowledge Receipt Time.

“Business Day” means the days between Monday and Friday of the week, inclusive.

“Business Hour” means a clock hour during Standard Business Hours.

“Designated Contact” means the Company’s contact designated to communicate with Provider for the provision of Services.

“Incident” means a single, discrete technical problem in the Provider Technology that cannot be reasonably subdivided, and also that is not overly broad in scope that prevents it from substantially conforming to the applicable Documentation.

“Standard Business Hours” means the hours of 9:00 a.m. to 6:00 p.m., Australian Eastern Time (unless otherwise specified in an applicable Order Form), each Business Day.

“Support Center Hours” means the operating hours of support.

2. SUBSCRIPTION

Provider will periodically make available service packs, updates, corrections and bug fixes (collectively, “Updates”) for electronic download from Provider’s website. Provider shall notify Company’s designated personnel of availability of Updates. Company is responsible for validating and installing any Updates in Company’s operating environments.

3. SUPPORT SERVICES

Provider will provide support to Company for all Support Services Levels except Limited according to the terms set forth below. For the avoidance of doubt, Provider shall have no obligation to provide Support Services for the Limited Support Services Level.

3.1 Severity Levels

Severity 1 (“Critical”) Incidents: A Severity 1 Incident means the (i) production system is severely impacted or completely shut down, or (ii) system operations or mission-critical applications are inoperable.

Severity 2 (“Major”) Incidents: A Severity 2 Incident means (i) the system is functioning with limited capabilities, or (ii) is unstable with periodic interruptions, or (iii) mission critical applications, while not being affected, have experienced material system interruptions.

Severity 3 (“Minor”) Incidents: A Severity 3 Incident means (i) the system is fully functional but there are observed errors that do not impact the usability of the system.

3.2 Designated Contacts

Provider will provide Services to Company only by communication with the Designated Contacts, two (2) Designated Contacts for Gold level and three (3) for Platinum level. Company may purchase additional Designated Contacts at additional cost. Company shall use commercially reasonable efforts to maintain consistent Designated Contacts during the term of this Agreement. Company may not use a single Designated Contact to act as a mere forwarding service for other Company personnel.

3.3 Response Times

Once Company has contacted Provider about an Incident, Provider will provide an acknowledgement of receipt within the applicable time frame specified below, in accordance with Company’s appropriate Support Services Level. Provider will be responsible for fixing reproducible bugs, testing fixes, and delivering appropriate patches to Company within commercially reasonable means. Bug fixes will be delivered to Company development team, unless Company notifies Provider otherwise. As used in this Article, a response means a qualified Provider engineer has been assigned to the Incident and has begun to work to resolve the Incident.

PLATINUM LEVEL

| Severity Level | Support Center Hours | Acknowledge Receipt Time |
|----------------|-------------------------|--------------------------|
| 1 | 24x7 | 1 clock hour |
| 2 | Standard Business Hours | 2 Business Hours |
| 3 | Standard Business Hours | 1 Business Day |

GOLD LEVEL

| Severity Level | Support Center Hours | Acknowledge Receipt Time |
|----------------|-------------------------|--------------------------|
| 1 | Standard Business Hours | 4 Business Hours |
| 2 | Standard Business Hours | 1 Business Day |
| 3 | Standard Business Hours | 2 Business Days |

The prescribed response times above may be extended by mutual agreement of both parties in writing on a per Incident basis.

3.4 Support Exclusions

Provider is not obligated to provide Support Services in the following situations:

- a) Provider Technology has been modified, changed, damaged by Company in any way, except as directed by or under agreement with Provider, with or without malicious intent;
- b) The Incident is caused by Company's negligence, malicious intent, hardware malfunction, or other causes beyond the reasonable control of Provider;
- c) The Incident is caused by Third Party Technology;
- d) Company has been previously provided a fix for an Incident reported to Provider and where Company has not installed such fix within forty-five (45) days after its being given to Company;
- e) The deployment environment is not approved or supported by Provider, as identified at <http://www.liferay.com/services/support/support-matrix>; or
- f) Provider has discontinued Services for the version of the Provider Technology in accordance with Provider's End of Service Life (EOSL) Policy, a copy of which can be found at <http://www.liferay.com/products/liferay-portal/ee/end-of-service-life>.

Notwithstanding the above, Provider may nevertheless, but is not obligated to, offer to provide support to Company. Provider is, in these cases, only obligated to make a reasonable effort to treat the Incident, and Company is not entitled to a final resolution of the Incident.

3.5 Conditions for Providing Support

Prior to logging an Incident with Provider, Company will endeavor to diagnose the nature of the Incident to ensure that it is resident in the Provider Technology and not a third party application or component. During the collaborative initial phase of reporting an Incident, Company will reciprocate a reasonable level of time and resources in accordance with the severity of Incident. Company acknowledges that Provider's ability to perform certain Support Services may be conditioned upon access to and completeness of certain Company information as reasonably requested by Provider. Such information may include, but is not limited to, the type of hardware Company is using, a description of the Incident for which Company seeks Support Services, and additional software Company is using that falls outside the Support Services scope of coverage.