

#### ENGLISH

Acceptance of this Liferay Marketplace Developer Agreement is required. If you do not understand or cannot read the terms and conditions of this Liferay Marketplace Developer Agreement, do not click the checkbox stating you agree. Please scroll and read through the entire agreement before clicking the checkbox that states you agree.

#### SPANISH

La aceptación de este Liferay Marketplace Developer Agreement es obligatoria. Si no entiendes o no puedes leer los términos y las condiciones de este Acuerdo para Desarrolladores del Marketplace de Liferay, no marques la casilla donde se acepta el acuerdo. Por favor, lee el acuerdo completo antes de marcar la casilla que indica tu aceptación.

#### GERMAN

Wir benötigen Ihr Einverständnis mit der Liferay Marketplace Developer Vereinbarung. Falls Sie die Bedingungen der Liferay Marketplace Developer Vereinbarung nicht lesen bzw. verstehen können, so klicken Sie bitte nicht die Checkbox mit dem Sie Ihr Einverständnis erklären. Bitte lesen Sie die Liferay Marketplace Developer Vereinbarung sorgfältig und vollständig durch bevor Sie am Ende die Checkbox klicken mit dem Sie Ihr Einverständnis erklären.

#### FRENCH

Votre accord avec le Liferay Marketplace contrat de developpeur est nécessaire. En cas que vous n'êtes pas capable de lire ou comprendre les conditions du Liferay Marketplace contrat de developpeur, ne pressez pas la checkbox avec laquelle vous exprimez votre consentement. S'il vous plait, utilisez la barre de défilement pour lire complètement et soigneusement le Liferay Marketplace contrat de developpeur avant de presser la checkbox avec laquelle vous exprimez votre consentement.

#### PORTUGUESE

A aceitação do Acordo de Desenvolvimento do Liferay Marketplace é obrigatória. Se você não entende ou não pode ler os termos e condições deste Acordo de Desenvolvimento do Liferay Marketplace, não clique no checkbox que indica que você aceita. Por favor, leia todo o acordo antes de clicar no checkbox.

### LIFERAY MARKETPLACE DEVELOPER AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE MARKETPLACE TO MARKET OR DISTRIBUTE YOUR DEVELOPER PRODUCTS, DOWNLOADING AND/OR USING THE LIFERAY MARKETPLACE. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, YOU WILL NOT HAVE ANY RIGHT TO USE THE MARKETPLACE AND LIFERAY SOFTWARE AND YOU MUST IMMEDIATELY DISCONTINUE PARTICIPATION IN THE MARKETPLACE PROGRAM AND USE OF THE LIFERAY SOFTWARE.

#### 1. Definitions.

The following capitalized terms that are not defined within the body of this Agreement are defined as follows:

**"Agreement"** means this Liferay Marketplace Developer Agreement between you and Liferay, Inc., with its headquarters located at 1400 Montefino Ave, Diamond Bar, CA 91765, U.S.A.

**"Default EULA"** means the then-current version of the end user license agreement made available by Liferay by default for Developer Products at the time the applicable Developer Product is submitted by the Developer. For clarity, the Default EULA is provided solely for your convenience and your use of the Default EULA is subject to the terms of this Agreement, including, without limitation, Sections 13 (Disclaimer of Warranties), 14 (Indemnification), and 15 (Limitation of Liability). Liferay recommends that you have your attorney review the Default EULA to determine if it is right for you.

**"Developer"** means any person or legal entity that has registered and has been approved by Liferay to distribute Developer Products via the Marketplace.

**"Developer Product(s)"** means all software applications, content, screenshots, icons, descriptions, games, digital materials, solutions and services that you offer or submit for offer to End Users via the Marketplace, including any content, ads, services, technology, data and other digital materials included in such items, together with their enhancements, upgrades, updates, bug fixes, new versions and other modifications and amendments.

**"End User"** means an individual and/or entity that purchases or licenses your Developer Products.

**"End User License Agreement"** means the agreement that governs End Users' rights to a Developer Product.

**"Liferay"** means Liferay, Inc. and its affiliates.

**"Liferay Software"** collectively means Liferay DXP and/or any other software provided by Liferay as part of the Marketplace Program, and includes any Updates to any of the foregoing that may be provided to you by Liferay.

**"Logo"** means any trademark, service mark, logo or other indication of origin.

**"Marketplace"** means the general marketplace provided by Liferay where Developers can sell and distribute Developer Products directly to End Users.

**"Marketplace Program"** means the developer program managed by Liferay to provide a platform and resources for Developers for the design, development, creation, management, administration, sale and distribution of their Developer Products.

**"Net Proceeds"** means the total amounts collected from End Users in connection with the purchase of a Developer Product from the Marketplace, (i) minus any taxes collected from End Users for remittance by Liferay or a third party payment processor as provided in Section 6.4 of this Agreement; and (ii) minus any amounts refunded to End Users or charged back by Liferay or the third party payment processor.

**"Open Source License"** means any software licensed under an Open Source Initiative Approved License, a list of which is currently available at <http://opensource.org/licenses/alphabetical>. For the purposes of this Agreement, "Open Source License" shall also include any license requiring, as a condition of use, modification and/or distribution of the software subject to the license, that the software or other software combined and/or distributed with it be (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.

**"Open Source Software"** means any technology that is or becomes subject to the terms of an Open Source License.

**"Term"** means the period of time defined in Section 8.1 below.

**"Updates"** means bug fixes, updates, upgrades, modifications, enhancements, supplements, and new releases or versions of Liferay DXP and/or any other software provided by Liferay as part of the Marketplace Program, or to any part thereof.

## **2. Liferay Obligations.**

### **2.1 Developer Appointment.**

Upon your approval into the Marketplace Program by Liferay, subject to the terms and conditions herein, and for the duration of the Term, Liferay (1) appoints you as a Developer within the Marketplace Program and (2) grants you, a limited, non-exclusive, non-assignable, non-sublicensable, non-transferable, revocable, worldwide right to access and use the Marketplace, and the Liferay Software and other materials if and when made available to you by Liferay as part of the Marketplace Program solely for the development and testing of your Developer Products in connection with the Marketplace Program as further defined in Section 4 ("License and Restrictions").

### **2.2 No Obligation to Provide Updates or Support.**

Liferay may provide Updates for the Liferay Software or may extend, enhance, or otherwise modify the related services from time to time without notice. Any Updates provided by Liferay shall be governed by the terms of this Agreement, unless the Update is accompanied by separate terms and conditions in which case such terms will govern. Liferay is not obligated to provide any maintenance, technical or other support for the Liferay Software or services. You acknowledge that Liferay has no express or implied obligation to announce or make available any Updates to the Liferay Software or any services to anyone in the future.

## **3. Your Obligations.**

### **3.1 Grant to Liferay.**

Liferay's role is to provide the software and services to enable the Marketplace, which includes processing the related purchases, distributions, returns and chargebacks for you. You appoint Liferay to act as your agent for these purposes, and you acknowledge that you, not Liferay, are the distributor of the Developer Products. You hereby grant to Liferay in its capacity as your agent the nonexclusive, irrevocable (subject to Section 8), worldwide, royalty-free (subject to payment of any applicable Developer Product Proceeds) right to post your Developer Products on the Marketplace for distribution to End Users in accordance with the publishing options selected by you when uploading. You also grant Liferay the non-exclusive, irrevocable, royalty-free, worldwide rights to: (i) copy, publicly perform, display, use, evaluate and test your Developer Products for administrative and demonstration purposes in connection with the operation and marketing of the Marketplace and to make improvements to the Marketplace; (ii) reproduce and store your Developer Products in digital form at one or more facilities and modify and add to your Developer Products in order to implement technologies enabling digital signing of your application and digital rights management (if applicable), all for the purpose of promoting and making your Developer Products available for distribution by you in connection with the Marketplace Program; and (iii) retain, after the Term, one or more electronic copies of Developer Products and allow access to downloads and re-downloads of Developer Products by End Users as provided in this Agreement.

### **3.2 Promotion, Right to Use Logos.**

You grant Liferay the right to use, display, demonstrate and publicly perform your entity name, Developer Product(s) or portions of your Developer Product(s), and Logos, without modification, in connection with promoting and making your Developer Products available for distribution by you in connection with the Marketplace Program.

### **3.3 End User Warranty and Support.**

You will remain the primary obligor for your Developer Products and will be solely responsible for any warranty, support and maintenance of your Developer Products and any complaints about your Developer Products or any other form of End User assistance regarding the Developer Product. The fact that Liferay

may have reviewed, tested, approved or selected your Developer Products does not in any way relieve you of such responsibilities. Your contact information will be displayed in each Developer Product page and made available to End Users for customer support purposes.

## **4. License and Restrictions.**

### **4.1 General.**

Subject to the terms and conditions herein, Liferay grants you, a limited, non-exclusive, non-assignable, non-sublicensable, non-transferable, revocable, worldwide right and license to access and use the Marketplace, and any /or and other materials made available to you by Liferay as part of the Marketplace Program solely for the development and testing of your Developer Products in connection with the Marketplace Program.

### **4.2 Restrictions.**

Neither you nor anyone on your behalf may:

- (a) intentionally tamper with, disable, circumvent, or alter (or attempt to take any of these actions) any method of measuring, tracking, monitoring or billing for the Marketplace element or back-end component of the Liferay Software.
- (b) to a third party, transfer rights or usage to, sublicense, rent, lease or otherwise distribute the Liferay Software, or any portions thereof, except with Liferay's prior written consent;
- (c) create derivative works of the Liferay Software;
- (d) modify, loan, decompile, reverse engineer or disassemble or otherwise distribute the Liferay Software, except with Liferay's prior written consent;
- (e) use the Liferay Software in any manner that is not expressly permitted under this Agreement;
- (f) use the Liferay Software in violation of any Applicable Laws;
- (g) use the Liferay Software in a production environment, using live data; or
- (h) remove any intellectual property notices on the Liferay Software.

### **4.3 Third Party Software.**

The Liferay Software may contain or use third party software and other copyrighted material ("**Third Party Software**"). Liferay will have no responsibility and claims no right with respect to any Third Party Software. Your use of such Third Party Software and other copyrighted material is governed by their respective terms.

## **5. Developer Products; Submission and Selection.**

### **5.1 Developer Products.**

As between you and Liferay, you will own, and remain the primary obligor to End Users and will be solely responsible for, your Developer Products, including (a) ensuring that they comply with all applicable laws, statutes, rules, regulations, ordinances and government policies that may be in effect from time to time (collectively "**Applicable Laws**") and the terms of this Agreement and (b) all claims and liabilities involving or relating to your Developer Products. Notwithstanding the foregoing, Liferay may remove or restrict any Developer Product that it reasonably believes does not comply with this Agreement or Applicable Laws, and will have no liability to you if it does so. Liferay may disable and/or remove any Developer Product that, in its reasonable discretion, does not comply with this Agreement, or causes harm to the Marketplace or Liferay's reputation.

### **5.2 Submission of Your Developer Products.**

You will deliver to Liferay, at your sole expense, your Developer Products and associated metadata, in a format and manner prescribed by Liferay in the Liferay Developer Guide, the Liferay Marketplace Portal, and in other documentation as required for the delivery of your Developer Products to End Users in

accordance with this Agreement. You hereby grant permission to Liferay to provide copies of your Developer Products and associated metadata to the relevant Liferay subcontractors, third parties and customers for review, testing and approval as set forth above and in the Agreement. Metadata you deliver to Liferay under this Section 5.2 may include, but shall not be limited to: (i) the title and version number of each of your Developer Products; (ii) the countries you designate, in which you wish Liferay to allow End Users to be distributed your Developer Products; (iii) any copyright or other intellectual property rights notices; (iv) your Developer EULA, if any, in accordance with Section 5.5; and (v) a description of your Developer Products (including contact information so that End Users can contact you for questions about your Developer Products and related maintenance, technical support and/or warranties that you provide) that Liferay will use to market your Developer Products. All Developer Products will be delivered by you to Liferay using software tools and/or such other delivery methods as prescribed by Liferay.

You will be solely responsible for developing Developer Products that are safe, free of defects in design and operation, and comply with Applicable Laws. At your discretion and once you decide that your Developer Product has been adequately tested and is complete, you may submit your Developer Product to Liferay for approval to be listed on the Marketplace. During the course of considering your Developer Product, Liferay may provide your Developer Products to third parties and Liferay's customers for review, testing and approval purposes. Notwithstanding the foregoing, you agree that Liferay will not be under any obligation to review or test your Developer Products prior to inclusion on the Marketplace (although Liferay may perform an anti-virus scan of your Developer Product). By submitting your Developer Product, you agree that you will not attempt to hide, misrepresent or obscure any features, content, services or functionality in your submitted Developer Product from review by Liferay or otherwise hinder Liferay from being able to fully review your Developer Products. You agree to cooperate with Liferay in this submission process and promptly answer questions and provide information and materials reasonably requested.

### **5.3 Changes to Your Developer Products.**

If you make any changes to your Developer Products after submission to Liferay, you must resubmit the Developer Products to Liferay for approval. Similarly, all bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases and new versions of your Developer Products must be resubmitted to Liferay for approval in order to be listed for distribution via the Marketplace.

### **5.4 Selection for Inclusion.**

You acknowledge that Liferay may, in its sole discretion: (i) determine that any of your Developer Products do not meet all or any part of its standards for inclusion in the Liferay Marketplace; (ii) reject any of your Developer Products for any reason or for no reason or (iii) select your Developer Products for inclusion on the Marketplace for distribution by you.

### **5.5 Ownership and End User Licensing.**

Liferay shall not acquire any ownership interest in or to any of your Developer Products, and title, risk of loss, responsibility for, and control over your Developer Products shall, at all times, remain with you. You, not Liferay, will license the right to install and use the Developer Products to End Users. Liferay may not use any of your Developer Products for any purpose, or in any manner, except as specifically authorized in this Agreement.

You may provide an end user license agreement ("**Developer EULA**") for your Developer Product if it complies with the requirements of, and is not inconsistent with, this Agreement and complies with all Applicable Laws in all countries where you wish Liferay to allow End Users to download that Developer Product. If you do not provide such a Developer EULA with respect to any Developer Product, you acknowledge and agree that each End User of such Developer Product shall be subject to the Default EULA. Liferay does not have any responsibility or liability related to compliance or non-compliance by you or any End User under your Developer EULA or the Default EULA, as applicable. The Developer EULA must, at a minimum, include provisions:

- (a) acknowledging that the Developer EULA is concluded between you and the End User only, and not with Liferay, and you, not Liferay, are solely responsible for the Developer Product and the

content thereof;

- (b) excluding Liferay from any liability or obligations (including maintenance or support obligations) whatsoever in relation to the Developer Product made available through the Marketplace;
- (c) requiring the End User to represent and warrant that (i) he/she is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) he/she is not listed on any U.S. Government list of prohibited or restricted parties;
- (d) stating your name and the contact information (telephone number; email address) to which any End User questions, complaints or claims with respect to the Developer Product should be directed; and
- (e) that make Liferay an intended third party beneficiary to the Developer EULA in respect of these provisions.

Notwithstanding the above minimum provision requirements, if your Developer Product is being made available pursuant to an Open Source Initiative Approved License, a list of which is currently available at <http://opensource.org/licenses/alphabetical>, you may make such Developer Product available under the terms and conditions of such Open Source Initiative Approved License.

## **5.6 Developer Responsibility.**

You are solely responsible, and Liferay and subcontractors will not have any responsibility or liability whatsoever, for:

- (a) the installation and/or use of any of your Developer Products by any End User;
- (b) any and all product warranties, End User assistance and support with respect to each of your Developer Products; and
- (c) any and all claims, suits, liabilities, losses, damages, costs and expenses arising from, or attributable to, your Developer Products and/or the use of your Developer Products by any End User, including, but not limited to: (i) claims of breach of warranty, whether specified in the End User License Agreement or established under Applicable Law; (ii) product liability claims; and (iii) claims that any of your Developer Products and/or the End User's possession or use of your Developer Products infringes the copyright or other intellectual property rights of any third party.

If you no longer have the legal right to distribute your Developer Products, or any such distribution would violate Applicable Laws, or to authorize Liferay to distribute your Developer Products to End Users, you will promptly notify Liferay and Liferay will withdraw the applicable Developer Products from the relevant Marketplaces; provided, however, that such withdrawal by you shall not relieve you of any of your obligations to Liferay, any Liferay customer, any Liferay subcontractor or any End User with respect to your Developer Products.

## **5.7 Open Source Software.**

If your Developer Products include any Open Source Software, you agree to (i) comply with all applicable Open Source Licenses, and (ii) include in your Developer Products the notices, documentation, and source code or offer for source code (including unmodified source code) required by the applicable Open Source Licenses. You also agree not to use any Open Source Software in the development of your Developer Products in such a way that would cause any proprietary technology (other than your own proprietary technology) to become subject to the terms of an Open Source License under which downstream recipients or other third parties may claim the right to (x) copy, create derivative works of, or redistribute the proprietary technology, or (y) receive source code to the proprietary technology.

## **6. Fees.**

### **6.1 Program Fees.**

In the event any of your Developer Products available to End Users via the Marketplace are subject to a charge, you may be required to pay an annual program fee as set forth by Liferay as consideration for the rights and licenses granted to you under this Agreement and your participation in the Marketplace

Program,. For clarity, there is no program fee if you provide all your Developer Products to End Users free of charge. The fees are non-refundable. Any taxes that may be levied on Liferay Software or your use of it shall be your responsibility. Your program fees must be paid up and not in arrears at the time you submit (or resubmit) your Developer Products to Liferay under this Agreement, and your continued use of the Marketplace site is subject to your payment of such fees.

## **6.2 Marketplace Fee.**

In consideration for its services as your agent under this Agreement. Liferay shall be entitled to a commission equal to twenty percent (20%) of Net Proceeds received from End User ("**Marketplace Fee**"). For clarity, there is no Marketplace Fee if you provide your Developer Products to End Users free of charge.

## **6.3 Developer Product Pricing and Payment Processing.**

### **6.3.1 Developer Product Pricing.**

When you submit a Developer Product to Liferay, you may designate the price (if any) to be charged to End Users and Liferay will charge that price in making your Developer Product available in the Marketplace. Any prices shall be understood as net of any and all taxes collected as provided in Section 6.4 below.

### **6.3.2 Developer Product Proceeds.**

As complete payment to you in connection with your participation in the Liferay Marketplace Program, Liferay will pay you applicable Developer Product Proceeds, which, if any, will be calculated by deducting the Marketplace Fee from Net Proceeds ("Developer Product Proceeds"). If Liferay removes any Developer Product(s) of yours from the Marketplace during the applicable month for breach of this Agreement or in response to an allegation of intellectual property infringement, Liferay may deduct any costs incurred in connection with the removal of such Developer Product(s) from any Developer Product Proceeds otherwise payable to you under this Section 6.3.2. If Liferay terminated your participation in the Marketplace Program for breach of this Agreement, Liferay may deduct any costs incurred in connection with closing your Marketplace account from any Developer Product Proceeds otherwise payable to you under this Section 6.3.

### **6.3.2 Payment Processing.**

Liferay will make all Developer Product Proceeds payments to you within ninety (90) days following the date the Developer Product has been purchased by the End User. Payments will be made either via a third party payment processor, by issuing a check or by other payment methods, as deemed appropriate by Liferay. Liferay is not responsible for delay, loss or misapplication of funds due to incorrect or incomplete information supplied by you or a bank or for failure of a bank to credit your account. You acknowledge that the amount you actually receive will depend in part on the rates and fees imposed by your financial institution and on any applicable tax withholding requirements, and that the amount you receive will be inclusive of any sales, use, or value- added taxes that may be chargeable between you and Liferay in connection with the Marketplace Fee. Liferay may require that you maintain an active account with a third party payment processor in order to receive any Developer Product Proceeds or to participate in the Marketplace Program. You must provide Liferay (or its third party payment processor) with all financial, tax and banking information requested in order to make payment of amounts owed under this Agreement. Failure to provide such information or to keep such information current and accurate may result in Liferay's removal of your Developer Products from the Marketplace and forfeiture of amounts owed to you under this Agreement.

### **6.3.3 Refund, Reconciliation and Offset.**

You acknowledge and agree that Liferay may refund any applicable sales amount (or a portion thereof) to End Users in its own discretion. In the event Liferay refunds any applicable sales amount (or a portion thereof) to an End User, you acknowledge and agree that you will not receive and will have no right to receive Developer Product Proceeds on that portion of the sale amount that was refunded.

You are responsible for all costs and expenses for returns and chargebacks of your Developer Products, including the full refund and chargeback amounts paid or credited to End Users. Refunds

processed after you receive the Developer Product Proceeds will be debited against your account. Liferay may offset any amounts owed to Liferay against amounts Liferay owes you.

## **6.4 Taxes**

### **6.4.1 Collection and Remittance.**

You remain responsible for the payment of all applicable taxes relating to this Agreement, including any fines, penalties, surcharges or interest, but excluding any taxes based solely on the net income of Liferay. As your agent Liferay or a third party payment processor will collect and remit sales, use, goods and services, value added or similar taxes, if any, applicable to End Users' acquisition of your Developer Product(s) through the Marketplace. It is your responsibility to designate the sales price of your Developer Product appropriately and verify the correctness of the collection and remittance of any taxes. You will indemnify and hold Liferay harmless against any and all claims by any tax authority for any underpayment of any sales, use, goods and services, value added or other tax or levy, and any penalties and/or interest thereon.

### **6.4.2 Taxes on Payments.**

You are responsible for your own taxes, including taxes unique to where you reside, related to payments you may receive under this Agreement. You are also responsible for paying any sales, use, or value-added taxes, if any, that may be chargeable by you to Liferay in connection with the Marketplace Fee that Liferay collects as a fee for acting as your agent in making your Developer Product(s) available in the Marketplace. If taxes are required to be withheld on any amounts to be paid by Liferay to you, Liferay will deduct such taxes from the amount owed and pay them to the appropriate taxing authority and will secure and deliver to you an official receipt for any such taxes withheld. Liferay shall use reasonable efforts to minimize such taxes to the extent permissible under applicable law, and each party shall reasonably cooperate with the other to obtain the lowest tax rates or elimination of such taxes pursuant to the applicable income tax treaties.

## **7. Reservation of Intellectual Property Rights.**

Except for licenses expressly provided in this Agreement, no licenses to the intellectual property rights of a party are implied under this Agreement. Liferay retains all rights, title, and interest in and to the Liferay Software. You agree to cooperate with Liferay to maintain Liferay's ownership of the Liferay Software, and, to the extent that you become aware of any claims relating to the Liferay Software, you agree to use reasonable efforts to promptly provide notice of any such claims to Liferay. The parties acknowledge that this Agreement does not give Liferay any ownership interest in your Developer Products.

## **8. Effective Date; Term and Termination; Survival.**

### **8.1 Effective Date and Term.**

The Effective Date of this Agreement will be the date on which Liferay accepts your registration as a Developer in the Marketplace Program. This Agreement and the licenses provided by you to Liferay will have a perpetual term, unless terminated earlier in accordance with the terms and conditions of this Agreement (the "**Term**"). This Agreement will automatically terminate if you are (a) not a Developer in good standing, or (b) a person or entity barred from using Liferay Software under the laws of the United States or other countries including the country in which you are resident or from which you use the Liferay Software.

### **8.2 Termination for Convenience.**

Either party may terminate this Agreement for any reason or for no reason by delivering written notice to the other party at least thirty (30) days prior to the effective date of termination. Liferay may also in its sole judgment remove any Developer Products from the Marketplace or otherwise terminate or suspend all or part of the Marketplace Program for you only, upon notice to you, or for all or any subset of Developers, without specific notice to you.



### **8.3 Termination for Cause.**

If you materially breach this Agreement, Liferay may terminate this Agreement effective immediately and without prior notice.

### **8.4 Effect of Termination.**

Unless Liferay otherwise determines, any termination or suspension in accordance with the terms hereof will not affect the rights in, access to, downloads or re-downloads of your Developer Products by End Users who have previously licensed or purchased your Developer Products before the effective date of the termination or suspension. Liferay is not obligated to return copies of any Developer Products or other materials that you provide. All rights to your Developer Products acquired by End Users will survive termination. If you terminate this Agreement, Liferay will have sixty (60) days following receipt of your notice of termination to reasonably wind down any use of your Developer Products and remove them from the Marketplace. The licenses granted by you in Section 3.1 shall survive for such purposes.

### **8.5 Survival**

Any provisions intended by their nature to survive any expiration or termination of this Agreement (including without limitation those relating to confidentiality, disclaimers of warranties, limitation of liability and indemnification) will do so.

## **9. Privacy.**

### **9.1 Privacy and Your App.**

You and your Developer Products must comply with Applicable Laws related to privacy and data protection (including, but not limited to applicable wiretap, medical information and intercept laws). Neither you nor your Developer Products will collect any identifiable information from a third party or otherwise intercept or collect communications or other data (such as an IP address) without obtaining such third party's informed consent to the extent required under Applicable Laws. If you obtain any End User data from Liferay, you will limit your use of such End User data to the extent required to support the transactions contemplated in connection with the distribution of your Developer Products to the End User and to fulfill any obligations towards the End User resulting from such transactions (e.g. support of the Developer Product), unless you have a separate and overriding consent to use the applicable data in a broader manner (in each case, in compliance with all Applicable Laws). You will (i) not modify any End User data in a manner that adversely affects its integrity, and (ii) treat, store, transmit, disclose and use the information only in accordance with the applicable privacy notice and Applicable Laws. Without limiting the foregoing, with respect to any End User data you collect, you shall (x) provide legally adequate privacy notices to each End User and obtain all necessary consents under Applicable Law and (y) notify End Users that Liferay is not responsible for the privacy, security or integrity of the End User data (z) maintain and handle all of the End User data in accordance with privacy and security measures reasonably adequate to preserve its confidentiality and security and all applicable Laws.

### **9.2 Your Privacy.**

By entering into the Marketplace Program you give Liferay full consent to collect your data (including the personal data of your personnel) (collectively, "**Data**") and to use such Data to communicate with you and your personnel regarding the Marketplace, any services you receive from Liferay, the Marketplace Program and, in Liferay's sole judgment, information about Liferay's products that Liferay determines may be relevant to your Developer Products' development or related business needs. Data will be handled in accordance with Liferay's privacy statement which is accessible by clicking the Privacy Policy link at the bottom of this site and which is also located at: <https://www.liferay.com/privacy-policy>. Liferay may provide Data to its affiliates and subcontractors for the fulfillment of its obligations, notify you of changes to the Marketplace Program, enable cross communication amongst all parties and to initiate and maintain the operations of the Marketplace and marketing and distribution of your Developer Products.

### **9.3 Third Party Sites.**

When you interact directly with third party web sites, including but in no way limited to Liferay's third party payment processor, you may be asked to provide personal data or submit to different requirements,

policies and rules regarding the use of such sites including as to the collection of personal data. You should be aware when leaving the Marketplace or interacting directly with third parties that those entities may treat your personal data differently than Liferay. You should review their respective privacy policies and terms of use.

#### **10. Export Compliance.**

Your Developer Products including the marketing or distribution of the Developer Products may be subject to Applicable Laws of the United States and the territory or country into which you request distribution. Such Applicable Laws may include without any limitation privacy and data protection laws and regulations relating to the collection and use of user information, telecommunication laws, content ratings regulations or export control laws. You must comply with all domestic and international laws and regulations governing marketing, use, export, re-export, transfer and distribution of your Developer Products. The Developer Product must not require further export, import or technology control licensing from any government. You must disclose to Liferay any controlled technology employed, used or supported by the Developer Product. You may not use the Marketplace or any services or tools made available thereunder for the development of apps for any illegal activity. You are responsible for determining all licensing and qualification requirements and obtaining licensing and qualification authority for the distribution of your Developer Products. If your Developer Product is unable to be self-classified, you will provide Liferay with a PDF copy of the Commodity Classification Automated Tracking System (CCATS) issued by the United States Commerce Department, Bureau of Industry and Security for the applicable Developer Product. Developer Products must be submitted with an Encryption Registration Number (ERN) when required by U.S. export regulations.

You represent that you are not in an embargoed/sanctioned country and that you are not a named party on the U.S. Department of Commerce's Denied Persons List or affiliated lists, the U.S. Department of Treasury's Specially Designated Nationals List or any domestic or foreign government export exclusion lists.

#### **11. General Compliance with Laws and Regulations.**

In addition to compliance with all applicable Open Source Licenses and all Applicable Laws related to privacy, healthcare, and export, you and your Developer Products must comply with any other Applicable Laws.

#### **12. Representations and Warranties.**

For each Developer Product you submit for inclusion on the Marketplace, and for each and any updates thereto, you represent and warrant that:

- (a) if you are entering this Agreement on behalf of a company or organization, you are authorized to bind the company or organization that you represent and for which you submit your Developer Products and you shall ensure that all personnel (including your subcontractors) comply with the terms of this Agreement, and this Agreement is enforceable against you or such company in accordance with its terms;
- (b) if you are an individual, you (i) are of an age of full legal capacity or have obtained the consent of your parent or guardian allowing you to enter into this agreement, (ii) may otherwise enter into and form binding contracts under Applicable Law and (iii) are not a person barred from receiving the services or Liferay Software under the laws of the United States or other countries, including the country in which you are resident or from which you use the services or Liferay Software.
- (c) your Developer Products comply with your documentation then in effect and you will provide truthful and accurate information to Liferay and immediately notify Liferay of any change to that information;
- (d) you will not, through the use of the Liferay Software, services or otherwise, create any Developer

Product or other software program that would disable, hack or otherwise interfere with Liferay's licensing mechanism implemented in the Liferay Software, any services or other Liferay software or technology, or enable others to do so;

- (e) you have all intellectual property and other rights necessary to grant the licenses and perform your obligations under this Agreement and, to the best of your knowledge, your Developer Products do not infringe or misappropriate the intellectual property or confidentiality or trade secret rights of any other party;
- (f) you do not have and will not have any third party commitment which conflicts with or interferes with any of your Marketplace Program obligations;
- (g) you will not engage in any activity with the Marketplace or services, including the development or distribution of an application, that interferes with, disrupts, damages, or accesses in an unauthorized manner the servers, networks, or other properties or services of any person or organization;
- (e) you will market your Developer Product only for its cleared or approved intended use/indication for use, and only in strict compliance with Applicable Laws and regulatory requirements; and
- (f) your Developer Product is authorized for distribution, sale and use in, export to, and import into each of the countries designated by you during the Developer Product on boarding process or otherwise, in accordance with the Applicable Laws of those countries and all applicable export/import regulations.

### **13. Disclaimer of Warranties.**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE MARKETPLACE, LIFERAY SOFTWARE, OTHER MATERIALS DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE MARKETPLACE AND ANY SERVICES IS AT YOUR SOLE RISK AND THAT THE MARKETPLACE, THE LIFERAY SOFTWARE, OTHER MATERIALS DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE MARKETPLACE AND ANY SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH USE. LIFERAY MAKES NO GUARANTEE REGARDING REVENUE OR SALES OF YOUR DEVELOPER PRODUCTS.

LIFERAY FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

### **14. Indemnification.**

You agree to indemnify, defend, and hold Liferay and its subcontractors, and their respective officers, directors, agents and employees, harmless from and against any and all claims, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees) ("**Claims**") arising out of or in connection with (i) any Claims that your Developer Products or the distribution, sale, offer for sale, use or importation of your Developer Products (whether alone or as an essential part of a combination) or metadata, violate, misappropriate or infringe any third party intellectual property or proprietary rights; (ii) any use of the Marketplace by you or any End User licensing your Developer Products other than as permitted under this Agreement, (iii) any warranties you make to End Users beyond the scope of those made by Liferay under this Agreement, (iv) any Claims resulting from your breach of this Agreement (including but not limited to your obligations regarding Liferay Software, third party software, compliance with laws or representations and warranties made under this Agreement), (v) your breach of any of your obligations under the End User License Agreement applicable to your Developer Products, (vi) Liferay's and its customers' and its subcontractor's permitted use, promotion or delivery of your Developer Products, metadata, related Logos, or images and other materials that you provide to Liferay under this

Agreement, or (vii) your use of the Liferay Software. In addition to the above, you will pay all amounts mutually agreed to by you and Liferay in a monetary settlement of the Claims and all losses that result or arise from the Claims. Liferay will promptly notify you, in writing, of any Claim for which Liferay believes that it or any other indemnified party is entitled to indemnification (provided that Liferay's failure to provide such notice or to provide it promptly will relieve you of your indemnification obligations only if and to the extent that such failure materially prejudices your ability to defend the Claims). Liferay may employ counsel at its own expense to assist it with respect to any such Claim; provided, however, that if such counsel is necessary because of a conflict of interest of either you or your counsel or because you do not assume control, you will bear the expense of such counsel.

In no event may you enter into any settlement or like agreement with a third party that affects Liferay's rights or binds Liferay in any way, without the prior written consent of Liferay.

## **15. EXCLUSION AND LIMITATION OF LIABILITY.**

### **15.1 EXCLUSION OF LIABILITY**

SUBJECT TO SECTION 15.3, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT 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, INABILITY TO USE YOUR DEVELOPMENT EFFORTS OR PARTICIPATION IN THE MARKETPLACE PROGRAM (INCLUDING WITHOUT LIMITATION THE FACT THAT YOUR DEVELOPER PRODUCTS MAY NOT BE SELECTED FOR DISTRIBUTION VIA THE MARKETPLACE) 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 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, COSTS OR EXPENSES.

### **15.2 Limitation of Liability**

SUBJECT TO SECTIONS 15.1 AND 15.3 AND EXCEPT FOR CLAIMS FOR FEES UNDER THE AGREEMENT FOR ALL EVENTS AND CIRCUMSTANCES AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LIFERAY'S AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, 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 THE ACCOUNT AND MARKETPLACE FEES RECEIVED BY LIFERAY FROM YOU DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY.

### **15.3 Exceptions**

NOTWITHSTANDING SECTIONS 15.1 AND 15.2 AND ANYTHING ELSE TO THE CONTRARY IN THE AGREEMENT, NOTHING IN THE AGREEMENT SHALL LIMIT OR EXCLUDE THE LIABILITY OF LIFERAY OR ITS AFFILIATE(S) WITH RESPECT TO FRAUD, FRAUDULENT MISREPRESENTATION

OR WILLFUL MISCONDUCT; DEATH OR BODILY INJURY CAUSED BY THE NEGLIGENCE OF LIFERAY OR ITS AFFILIATE(S), LIMITATIONS OR EXCLUSIONS OF LIABILITY THAT ARE NOT PERMITTED BY THE APPLICABLE LAW.

#### **15.4 Allocation of Risk**

THE PROVISIONS OF SECTION 13 AND THIS SECTION 15 ALLOCATE THE RISKS UNDER THIS AGREEMENT 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 AGREEMENT. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS CONTAINED IN SECTIONS 13 AND 15 APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY (INCLUDING ANY LIMITED OR EXCLUSIVE REMEDY) PROVIDED FOR IN THIS AGREEMENT FAILS IN ITS ESSENTIAL PURPOSE.

### **16. Confidentiality.**

#### **16.1 Liferay Confidential Information**

You agree that (i) the source code of the commercially licensed Liferay Software (including all its pre-release versions) and (ii) all other information provided by Liferay that is marked or identified as confidential or that, under the circumstances, would reasonably be understood to be confidential (even if not so marked) will all be deemed "**Liferay Confidential Information**". Liferay Confidential Information shall not include information which: (1) is or later becomes publicly available other than by the you disclosing it in violation of the Agreement or is explicitly disclosed by the Liferay without any obligation of confidentiality; (2) is or becomes available to you from a source other than you or your organization without the requirement that it be treated as confidential, provided that such source was not known by the you to be bound by an obligation of confidentiality with respect to such information; (3) is independently developed by you without use of the Liferay 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 your line of business; (6) is disclosed by you with the Liferay'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) you and Liferay agree in writing should not be treated confidentially or may be disclosed.

#### **16.2 Confidential Information**

You agree to protect Liferay Confidential Information using at least the same degree of care that you use to protect your own confidential information of similar importance, but no less than a reasonable degree of care. You agree to use Liferay Confidential Information solely for the purpose of exercising your rights and performing your obligations under this Agreement and agree not to use Liferay Confidential Information for any other purpose, for your own or any third party's benefit, without Liferay's prior written consent. You further agree not to disclose or disseminate Liferay Confidential Information to anyone other than: (i) those of your employees, agents, representatives and contractors, or those of your faculty and staff if you are an educational institution, 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. You may disclose Liferay 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, you will notify Liferay of the disclosure requirement (if you can provide notice without breaching any legal or regulatory requirement or court order) and cooperate with Liferay (at your expense) to obtain a protective order or other similar protection. If you are required by law, statute, regulation or court order to make such a disclosure you shall furnish only the portion of the Liferay Confidential Information that you, in the opinion of your legal counsel, are legally required to disclose and shall exercise reasonable efforts to preserve for the remainder the confidentiality of Liferay's Confidential Information. You acknowledge that damages for improper disclosure of Liferay Confidential Information may be irreparable; therefore, Liferay is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies.

#### **16.3 Non-Confidential Information**

Liferay works with many application and software developers and some of their products may be similar to or compete with your Developer Products. Liferay may also be developing its own similar or competing applications and products or may decide to do so in the future. To avoid potential misunderstandings, Liferay cannot agree to, and expressly disclaims any confidentiality obligations or use restrictions, express or implied, with respect to any information that you may provide in connection with this Agreement or the Marketplace Program (such disclosures will be referred to as "**Your Disclosures**"). You agree that all of Your Disclosures will be non-confidential. Liferay will be free to use and disclose any of Your Disclosures on an unrestricted basis without notifying or compensating you. You release Liferay and its subcontractors from all liability and obligations that may arise from the receipt, review, use, or disclosure of any portion of any your Disclosures. Any physical materials you submit to Liferay will become Liferay property and Liferay will not have any obligation to return those materials to you or to certify their destruction.

## **17. Miscellaneous.**

### **17.1 Publicity.**

Liferay may identify you as a Marketplace Program developer and use your name and/or Logos in press materials, promotions, presentations, white papers, on the Marketplace, and in client lists and other materials. You may not issue any press releases or make any other public statements regarding this Agreement, its terms and conditions, or the relationship of the parties without Liferay's express prior written approval, which may be withheld at Liferay's sole discretion.

### **17.2 Force Majeure.**

If the performance of any element of this Agreement is prevented, restricted or interfered with due to a cause beyond the reasonable control of the Parties, and not the result of the fault or negligence of the affected Party, the affected party will be excused from performance until the force majeure event is removed, provided that the affected party provides prompt notice to the other party and uses reasonable efforts to avoid or remove the causes of non-performance. This provision will not excuse either party from any payment obligation. If a force majeure event persists for more than thirty (30) days that prevents a party from performing its obligations, either party may terminate this Agreement upon fifteen (15) days' notice, unless the force majeure event has been removed.

### **17.3 Subcontractors.**

Liferay will have the right to utilize subcontractors to fulfill its obligations under this Agreement.

### **17.4 Choice of Law and Forum.**

This Agreement is governed by the laws of the State of California in the United States, without giving effect to any conflict of laws rules or principles that would require the application of the laws of a different jurisdiction. Venue in any suit or action between the parties arising out of or relating to the Agreement shall be in Los Angeles County, California. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

### **17.5 Waiver and Severability of Terms.**

If any provision of this Agreement is held to be unenforceable, that provision will be removed and the remaining provisions will remain in full force. The failure of either party to require performance by the other of any provision of this Agreement will not affect the full right to require performance at any later time; nor will the waiver by either party of a breach of any provision hereof be deemed a waiver of the provision itself. A breach of this Agreement may cause irreparable damage for which recovery of monetary damages would be inadequate and either party may seek injunctive or other equitable relief, in addition to any and all remedies available at law.

### **17.6 Assignment.**

You may not assign or transfer any of your rights under this Agreement without Liferay's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. You

have not relied on the availability of any future version of the Liferay Marketplace or the Marketplace or any future product in executing this Agreement.

**17.7 Entire Agreement; No Third Party Beneficiaries.**

This Agreement and the other agreements and documents referenced herein, as they may be updated from time-to-time, comprise the complete and exclusive statement of the agreement between the parties and supersede any proposal or prior agreement, oral or written, and any other communications between the parties in relation to the subject matter of this Agreement. You agree that, except for third party indemnitees or as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this Agreement.

**17.8 Independent Development.**

Nothing in this Agreement shall prohibit or impair Liferay's right to develop, acquire, license, market, promote, or distribute products or technologies that perform the same or similar functions as, or otherwise compete with, your application(s) or any other products or technologies you may produce, develop, market or distribute.

**17.9 Changes.**

Liferay may make changes to the terms of this Agreement (which Liferay may do at any time and from time to time in its sole discretion). In order to continue to participate in the Marketplace Program you must accept and agree to any new terms. If you do not agree to any new terms of this Agreement, your participation in the Marketplace Program may be immediately suspended or terminated by Liferay without notice, subject to Section 8.4 (Effect of Termination). You agree that your acceptance of any new terms of this Agreement may be signified electronically, including without limitation, by your checking a box or clicking on an "I agree" or similar button. Except as otherwise expressly provided in this Agreement, all notices or claims under this Agreement must be in writing and if (i) from Liferay to you, then they will be directed to the email address provided as part of your registration, and if (ii) from you to Liferay must be directed via email to [marketplace-admin@liferay.com](mailto:marketplace-admin@liferay.com), each as may be revised in writing from time to time. Notices will be effective upon delivery.