



## APPENDIX : SAAS EXPERIENCE

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This Appendix, which includes the documents incorporated by reference in this Appendix 6 (together, the “**Appendix**”), describes certain fee-bearing software-as-a-service (SaaS) subscription offerings, the SaaS Experience product offering (“**SaaS Experience**”), and related commercialized services listed in **Schedule A** (each, a “**Cloud Services**”). Any capitalized terms used but not defined in this Appendix have the meaning defined in the agreement to which this Appendix is attached (physically or by reference), such as the Liferay Enterprise Services Agreement (the “**Base Agreement**” and collectively, with this Appendix referred to as the “**Agreement**”).

### 1. Definitions

“**Acceptable Use Policy**” has the meaning set forth in Section 6.4, below.

“**Account**” means an individual account a Customer User must create and use to access Liferay Cloud Services.

“**CCPA**” means the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et seq., and its implementing regulations.

“**Customer Content**” means any content or data (including Personal Data) whether developed in connection with the Services or otherwise, software code, documentation, materials, information, text files, images and/or trademarks associated with Customer’s use of the Cloud Services, hosted in the Cloud Infrastructure, and not provided by Liferay.

“**Customer Application**” means a program with a distinct code base that customizes or extends the functionality of the Software and connects to a database with a distinct database schema.

“**Customer Data**” means data, including but not limited to data and information in electronic form, submitted by or for Customer to the Services.

“**Customer’s Personal Data**” shall mean Personal Data provided by or on behalf of the Customer to Liferay through use of the Cloud Services and processed by Liferay on behalf of the Customer.

“**Customer Portal**” means a web portal maintained by Liferay or a Liferay Affiliate that provides access to various resources for Cloud Services customers.

“**Data Protection Laws**” means the applicable data protection or privacy laws to the extent such laws apply to the processing of data within the scope of the Cloud Services.

“**Designated Contact**” means Customer’s contact designated to communicate with Liferay for the provision of Support and/or any other Subscription Services.

“**Documentation**” means the documentation generally made available by Liferay in conjunction with Cloud Services at [learn.liferay.com](https://learn.liferay.com) and in the Customer Portal.

“**Environment**” means a logical deployment context provisioned on Liferay Cloud Infrastructure for implementation of Liferay Software. Each environment runs in its own Kubernetes namespace with its own activation key. As used in herein, “namespace” means a logical partition within a Kubernetes cluster used to organize, isolate, and manage groups of related resources (including workloads, services, and configuration) within the same cluster.

“**Environment Type**” means one of the use cases for Environments – either Production, Non-Production, User Acceptance Testing (UAT) or Disaster Recovery (DR) – each as further described at <https://support.liferay.com/w/cloud-native-quotas-and-limitations>.

“**Fair Usage Policy**” has the meaning set forth in Section 6.4, below.

“**Liferay Content**” means software code that Liferay provides for use in connection with the Cloud Services such as software development kits or templates, containers, operators, and access documentation. For the avoidance of doubt, Liferay Content does not include any Third-Party Offerings.

“**Liferay Marketplace**” means a Liferay provided web-based catalog or marketplace of applications that interoperate with the Cloud Services including, for example at [www.liferay.com/marketplace](https://www.liferay.com/marketplace).

“**Liferay Subscription Apps**” means the applications in the Liferay Marketplace made available to subscribers in the “Liferay Subscription App” category.

“**Machine Type**” means the configuration of allocated resources for an Environment, either “Standard” or “High Performance”.

“**Personal Data**” shall have the meaning assigned to it by Data Protection Laws.

“**Pod**” means a Kubernetes pod in which one or more containers execute Liferay Software.

“**Services**” as defined in the Base Agreement shall, for the purposes of this Appendix, mean Cloud Services.

“**Software**” or “**Liferay Software**” means the software and corresponding Documentation that Liferay makes available as a service through the applicable Cloud Service as specified on the Order Form to which this Appendix is attached or referenced. “Software” does not mean and shall not include third-party software applications that are made available through the Liferay Marketplace located at [www.liferay.com/marketplace](https://www.liferay.com/marketplace) (“Third-Party Marketplace Apps”), any software program, computer code, programming libraries, application programming interfaces, or other materials, the intellectual property rights of which are not owned

by Liferay or its Affiliates (identified at [www.liferay.com/third-party-software](http://www.liferay.com/third-party-software)), Third-Party Offerings, or generally available open source projects such as any Liferay branded community edition of the Software and/or other community projects.

“**Subscription Term**” has the meaning defined in Section 5, below.

“**Technical and Organizational Measures**” means commercially reasonable physical, administrative, physical and technical measures taken by Liferay in order to assure integrity, security and confidentiality of Personal Data as set forth at <http://www.liferay.com/legal/cloud-services-data>.

“**Terms of Service**” has the meaning set forth in Section 6.4 below.

“**Third-Party Offering**” means a software application or service, provided by Customer or a third-party provider, and used by Customer that integrates or interoperates with the Cloud Services.

“**Unit**” means the unit of sale for the ordering and use of Cloud Services as further defined in Schedule A.

“**Users**” means any person, including Customer’s and/or its Affiliates employees, contractors, advisors, or employees or contractors of a third party, including any IT service providers, used by the Customer, registered to access and use the Cloud Services on behalf of the Customer.

## 2. Software Subscriptions

Each Cloud Service offering is associated with and limited to certain Liferay Software as further described in **Schedule A** and as indicated on the applicable Order Form.

## 3. Support

As indicated and further described in **Schedule B**, certain Cloud Services entitle Customer to Support. As used herein, “**Support**” means technical product support provided by Liferay to Customer for submitted Incidents as further described in the applicable Support Tiers Addendum.

## 4. Units and Fees

### 4.1 SaaS Experience

To enable Cloud Services for a Customer Application, Customer must have an active Unit of SaaS Experience for the Customer Application. Liferay charges a Fee for SaaS Experience based on the total number and types of Environments allocated to the applicable Customer Application.

### 4.2 Environments

Each Environment is assigned an Environment Type and a Machine Type. Each Machine Type is associated with an allocation of resources and certain limitations as identified at <https://support.liferay.com/w/cloud-native-quotas-and-limitations>. Customer may provision for the applicable Production Environment up to as many Pods as indicated on an applicable Order Form. The UAT and DR Environments, if purchased and applicable to Customer’s SaaS Experience, will be (1) the same Machine Type as the Production Environment and (2) with respect to number of available Pods, limited to the applicable number of Production Environment Pods, respectively. For clarity and avoidance of doubt, where applicable, the Non-Production Environment may be a different Machine Type than that of the Production Environment. The specific quantity of and other applicable parameters for Environments are described in this Appendix and as identified in the applicable Order Form.

### 4.3 Fees for Metrics

Each Unit of Cloud Services, and the associated Environments, is allocated with certain amounts of consumption-based resources as described at <https://support.liferay.com/w/cloud-native-quotas-and-limitations> (each, a “Metric”). Customer may supplement the Metrics by purchasing additional resources on a pre-commitment and pre-paid basis by executing an Order Form. In the event of such order, any amounts specified in the Order Form shall be deemed added to the respective base amounts of the Metric allocated to Customer’s SaaS Experience Environments and any amounts purchased under an applicable prior Order Forms for the remainder the applicable Subscription Term.

Additionally, Liferay may invoice, and Customer shall pay in accordance with the Agreement, the fees associated with any overages to the Metrics. Unless otherwise agreed to by the parties in writing, such overages will be calculated on a monthly basis and invoiced by Liferay on a quarterly basis.

### 4.4 Auto-Scaling

SaaS Experience include a feature that allow Customer to deploy and use additional Production Environment Pods in excess of the number of Pods for which Customer maintains active Cloud Services (“Base Subscriptions”) on an on-demand basis (“**Auto-Scaling**”). Customer may enable Auto-Scaling subject to the terms and conditions of the Agreement by activating the capability through the Cloud Services.

Pricing for each such Pod utilized through Auto-Scaling is based on the number of clock hours during which Customer utilizes each such Pod. For pricing purposes, total usage during a calendar quarter will be rounded up to the nearest full clock hour.

Liferay will issue an invoice to Customer for Fees applicable to use of Auto-Scaling after each quarter in which Customer deploys, uses or executes Auto-Scaling Pods and Customer will pay such invoice(s) in accordance with the Agreement. Unless otherwise specified in the applicable Order Form or another written agreement, the price per Unit is set forth on the pricing page accessible through Customer Portal and may be updated by Liferay from time to time.

Liferay will record Auto-Scaling usage, starting from the start time and ending at the end time, for each connected Pod ("Pod Uptime"). Liferay may invoice Customer for the total Pod Uptime of all Pods utilized through Auto-Scaling not covered by a Base Liferay SaaS Subscription, rounded up to the nearest whole hour.

## 5. Subscription Term

Unless otherwise agreed by the parties in writing, Cloud Services (i) will begin on the date Liferay accepts Customer's order for the applicable Cloud Services (please note that the foregoing does not limit Customer's obligation to pay for Cloud Services that Customer previously used but for which Customer has not paid), (ii) cannot be terminated for convenience by either party and (iii) may be renewed by the parties upon mutual agreement. The initial term of Cloud Services and any renewal term(s) are collectively referred to as the "**Subscription Term**".

## 6. Use of Subscription Services

### 6.1 Account

Customer is required to create an Account for each User to access and use Cloud Services by providing a valid email address and creating a secure password. Customer remains fully responsible for confidentiality of credentials used by Users to access their respective Accounts and any activity through those Accounts, either by Users or third parties, resulting in any unauthorized access to the Cloud Services. Customers may not (and may not allow third parties to) access the Cloud Services, or provide any third party access to the Cloud Services, in a manner that is intended to avoid Fees or to circumvent maximum capacity thresholds for the Cloud Services or otherwise increase the scope Cloud Services provided to Customer.

### 6.2 Internal Use and Affiliates

The Agreement (including pricing Liferay has agreed to in an Order Form) is premised on Liferay's understanding that Customer will use the Cloud Services only for Customer's internal use (which includes use by or on behalf of Customer's Affiliates; and, Affiliates shall not be considered a third party for the purposes of this Section, provided that Customer remains responsible for the Affiliates' compliance with terms of the Agreement and any Order Form). The foregoing sentence is not intended to limit Customer's internal use of the Cloud Services to operate a web site and/or to offer Customer's own software as a service, provided such web site or service (i) does not include access to Cloud Services, either in whole or in part and (ii) provides as the primary component of the web site or service a material value added application other than the Cloud Services. Customer's provision of access to any portion of the Cloud Services to a third party or use of any of the Cloud Services for the benefit of a third party (for example, using Cloud Services to provide hosting services, managed services, Internet service provider (ISP) services, or third party access to or use of the Cloud Services) shall be deemed a material breach of the Agreement.

### 6.3 Use by Third Parties

The Cloud Services may be used under the terms of this Appendix by third parties acting on Customer's or its Affiliates' behalf, such as contractors, subcontractors or outsourcing vendors, provided that (i) Customer remains responsible for all of Customer's obligations under the Agreement and for the activities and omissions of the third parties, and (ii) Customer controls the access to the Cloud Services.

### 6.4 Policies

As a condition to the use of Cloud Services, Customer agrees to comply with the Liferay Acceptable Use Policy, the most recent version of which is available at [www.liferay.com/legal/doc/policies/aup/1101811](http://www.liferay.com/legal/doc/policies/aup/1101811) (the "**Acceptable Use Policy**") and the Terms of Services, available at [www.liferay.com/legal/doc/TOS/1101906](http://www.liferay.com/legal/doc/TOS/1101906) (the "**Terms of Service**").

Customer's use of Cloud Services is subject to certain quotas and limitations set forth at <https://help.liferay.com/hc/en-us/articles/13068602483853> (the "**Fair Usage Policy**").

### 6.5 License to Liferay Content

In connection with the Cloud Services, Liferay may provide Customer with Liferay Content to use as part of Cloud Services. Liferay Content does not include any Third-Party Offerings, which are subject to separate license terms as further described in Section 6.6 below. During the Subscription Term, Liferay hereby grants to Customer a limited, worldwide, nonexclusive, royalty-free, non-transferable license, to use the Liferay Content solely in connection with Customer's permitted use of the Cloud Services. To the extent that components of Liferay Content are distributed under an open source license, Customer's use of such components is governed by the accompanying open source license. The terms of this Appendix are not intended to interfere with any rights Customer may receive under the applicable open source license.

### 6.6 Third-Party Offerings

Customer's use of Third-Party Offerings are each governed by the terms provided by applicable provider of a Third-Party Offering and, if Customer uses a Third-Party Offering, Customer agrees to abide by all applicable terms and conditions and to obtain the appropriate license or subscription, to the extent required, for the Third-Party Offering. If Customer uses the Cloud Services in connection with any other third-party software (e.g. developer kits), Customer represents and warrants that Customer has obtained the appropriate license from the third-party provider and has the rights to perform the actions contemplated in connection with the Cloud Services. Liferay and its licensors have no obligations or liability with respect to such third party or the Third-Party Offerings. For clarity, Third-Party Offerings do not constitute Liferay Content or Cloud Services.

Any disclosure, modification or deletion of Customer Data resulting from access by such Third-Party Offering or its provider is as between Customer and the provider. As such, Customer acknowledges and agree that Liferay shall have no responsibility or liability to Customer with respect to any such disclosure, modification or deletion.

To the extent that Cloud Services include features that interoperates with Third-Party Offerings, Liferay does not guarantee the continued availability and functionality of such features or such functionality. Liferay reserves the right to cease the provision of such features without any liability to Customer, including without limitation any obligation to refund, credit or other compensation, financial or otherwise, if, in Liferay's sole and reasonable judgment that the Third-Party Offering ceases to interoperate acceptably or safely with the Cloud Services.

## 6.7 Restrictions

### 6.7.1. General Restrictions

The rights granted to Customer under this Appendix do not authorize Customer and Customer will not (and will not allow any third party to): (i) duplicate, copy, distribute, sell, rent any parts of the Cloud Services or the Liferay Content to a third party except to the extent such conduct is permitted under applicable law or an applicable open source software license ; (ii) reverse engineer, translate, modify, loan, convert or apply any procedure or process to the Cloud Services or the Liferay Content, or any parts of either, in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings of the software utilized by Liferay in the provision of the Cloud Services or the Liferay Content, or any trade secret information or process contained in the Cloud Services (except as permitted under applicable law or license terms applicable to the concerned item); (iii) execute or incorporate other software (except for approved software as more particularly identified in the Documentation or specifically approved by Liferay in writing) into the Cloud Services, or create a derivative work of any part of the Cloud Services or the Liferay Content including but not limited to, any software utilized by Liferay in the provision of the Cloud Services; (iv) remove any product identification, trademarks, trade names or titles, copyrights, legends or any other proprietary marking in the Cloud Services or in the Liferay Content; (v) disclose the results of any benchmarking of the Cloud Services (whether or not obtained with Liferay's assistance) to any third party; (vi) use Cloud Services for the purpose of building a competitive product or service to Liferay Services or copying the Cloud Services features or user interface; (vii) use the Cloud Services to develop or enhance any software that is not Liferay Content (including but not limited to any open source version of software included as Liferay Content (such as "Liferay Portal")); (viii) use any of the Cloud Services in violation of any applicable laws (including, without limitation, Data Protection Laws, export or IP laws) or for any illegal activities or promotion, solicitation or encouraging of illegal activities and substances; (ix) using Cloud Services in a manner that might affect availability and enjoyment of the Cloud Services by other users or third parties (such as unauthorized access to the accounts of other customers, harassing other users or third parties, any attempts to circumvent agreed limitations or the Cloud Service, intercepting, unauthorized monitoring or penetration, performance, vulnerability or security testing of the Cloud Service or breaching security measures, use for illegal or unlawful file sharing, launching or facilitating a denial of service attack (DoS) from or on Cloud Service, hacking, cracking, spoofing or defacing any portion of the Cloud Service, posting, transmitting or distributing spam mail, mass mailings, chain letters, any robot, spider, site search/retrieval application, or other automatic or manual process or device to retrieve or index data or "data mine"); or (x) using Cloud Services for any purposes that might impact life, health or environment or telecommunication services, as "miner" or "forder" of cryptocurrencies or using Cloud Services to operate a general-purpose proxy or "open proxy".

### 6.7.2. Non-Compliance Remedies

Customer agrees to indemnify, defend and hold Liferay harmless from and against any costs, losses, liabilities, claims or expenses (including reasonable attorneys' fees) arising out of any allegation or claim to the extent is based on Customer's violation of Section 6.7.1.

In addition, Customer agrees that as a remedy in case of a breach as set forth in Section 6.7.1 (vii) above, Customer will pay Liferay the applicable Fees for Cloud Services for all applicable Units for which Customer utilizes the Cloud Services in connection with any such software or services as genuine pre-estimate of Liferay's losses and costs associated with such breach.

### 6.7.3. Limiting Devices

Customer is hereby notified that the Cloud Services and the Liferay Content may contain or be subject to time-out devices, counter devices, and/or other devices intended to ensure the limits of the rights granted to Customer under this Appendix will not be exceeded ("**Limiting Devices**"). If the Cloud Services or the Liferay Content contain or are otherwise subject to Limiting Devices, Liferay will provide Customer with materials necessary to use the Cloud Services and the Liferay Content to the extent permitted. Customer may not tamper with or otherwise take any action to defeat, disable or circumvent a Limiting Device or timing or use restrictions that are built into, defined or agreed upon, regarding the Cloud Services or the Liferay Content, including but not limited to, resetting the Unit amount.

## 7. Customer Content, Feedback

### 7.1 Liferay's Rights in the Content

In order to make Cloud Services available to Customer, Customer gives Liferay, its Affiliates, subcontractors, and any third party service providers on whose services Liferay may depend to provide the Cloud Services a worldwide, royalty-free, non-exclusive license to make, use, reproduce, prepare derivative works from, distribute, import, perform and display Customer Content for the purpose of providing the Cloud Services to Customer. Liferay does not expect to access Customer Content or provide it to third parties except (a) as required by applicable law or regulation (such as responding to an audit, agency action, a subpoena or warrant); (b) as may be necessary to deliver, enhance or support the Cloud Services provided to Customer; (c) to prevent, detect or address fraud, security or technology issues; (d) to investigate potential breaches of Customer's agreements with Liferay or to establish Liferay's legal rights or defend against legal claims; or (e) to protect against harm to the property, rights, or safety of Liferay, its users or the public. Except as set forth in this Section, Liferay obtains no rights in Customer Content under the Agreement. Customer represents and warrants that Customer owns all rights in, or has received a valid license to use the Customer Content, with rights or license sufficient to enable any activities in connection with the Cloud Services. Customer must provide all required and appropriate warnings, information and disclosures as may be required due to the nature of the Customer Content.

### 7.2 Customer Responsibilities

**7.2.1.** Customer is solely responsible for the Customer Content used with or made available through Customer's use of the Cloud Services, including but not limited to the Customer Content's compliance with applicable laws (including any applicable export laws or Data Protection Laws), the Customer Content's compliance with the Agreement, the right to use such Customer Content, and administering take down notices related to the Customer Content and Customer will remove immediately any Customer Content that does not meet these compliance requirements. Customers will not use the Cloud Services to store, create, transmit, share, publish, modify, or deploy Customer Content that is (i) violating laws, regulations or violates, misappropriates or infringes or is invasive of rights of any third parties, (ii) regulated under the International Traffic in Arms Regulations (ITAR); (iii) is malicious or contains technology that may damage, interfere with, or intercept any system, program or data, including viruses, worms, trojan horses, time bombs or other harmful or disruptive components; (iv) is threatening, abusive, harassing, defamatory, slanderous, libelous, derogatory, or violent; (v) is vulgar, obscene, bigoted, hateful, disparaging, or that advocates racial or ethnic intolerance; or (vi) is profane, scandalous, pornographic, pedophilic, indecent, or otherwise objectionable; (vii) harm minors in any way; (viii) deceives or misleads the addressee about the origin of such messages or communicates any information which is grossly offensive or menacing in nature; or (ix) infringes any patent, trademark, copyright or other proprietary rights. Customer may be required upon a reasonable request by Liferay to provide Content or other information as may be reasonably necessary

to ensure Customer's compliance with the Agreement. Customer will immediately respond to any notice that Customer receives claiming that Customer Content violates laws, this Agreement or a third party's rights, including, as applicable, notices under the applicable copyright laws, and take corrective action, which may include but is not limited to promptly removing any such Customer Content. Customer will maintain a policy to respond to any and all such requests that Customer may receive regarding Customer Content. Liferay however reserves the right to suspend or terminate Customer's use of or access to the Cloud Services immediately and without liability to a Customer if any Content breaks any applicable law, requires additional consent or permission a Customer has not obtained, or does not comply with the Agreement. Customer is responsible for ensuring that Customer Content is authorized for export, distribution and use under the Export Administration Regulations (EAR) and other export control laws and regulations that may be applicable based on Customer's use of the Cloud Services.

**7.2.2.** Customer agrees to indemnify, defend and hold Liferay harmless from and against any costs, losses, liabilities, claims or expenses (including reasonable attorneys' fees) arising out of any allegation or claim to the extent is based on (i) Customer Content, (ii) the combination of Customer Content with other applications, content or processes, or (iii) any claim or allegation that Customer Content infringes or misappropriates the intellectual property rights of any third party.

**7.2.3.** Customer is solely responsible for assessing if the backup functionalities that Liferay may provide as part of the Cloud Services are sufficient for Customer's purposes and needs. Between Liferay and Customer, Customer is responsible for taking security precautions for backing up Customer Content and for any other measures, that Customer deems necessary to ensure that Customer Content is not lost. Customer may lose any of the Customer Content for which Customer does not maintain a copy outside of the Services. Liferay and/or any of its vendors are not responsible to Customer, Customer Users or any third party, if Content is lost or deleted.

### 7.3 Feedback

Within the scope of this Appendix, Customer may submit feedback, including comments, information, enhancement requests, recommendations, corrections, and ideas regarding the Cloud Services (collectively "Feedback"). Customer confirms that such Feedback is not confidential information of Customer or any third party, but shall be deemed Liferay's Confidential Information. Customer grants Liferay a worldwide, perpetual and irrevocable license to use any and all Feedback for any purpose, including but not limited to incorporating such Feedback as Liferay's own into its products and services without any obligation to account to Customer in any way, which shall include without limitation, no attribution or compensation obligations, etc., and Liferay shall be the owner of any products and services it creates based, directly or indirectly on Customer's Feedback.

## 8. Reporting and Inspections

Customer will immediately notify Liferay if Customer suspects (1) Customer (or a party on Customer's behalf) has breached Customer's obligations with respect to Customer's use of the Cloud Services, or (2) an unauthorized party has obtained unauthorized access to Customer's Accounts, the Customer Content and/or Cloud Services.

If Liferay has reason to believe that Customer or Customer Users have breached the Agreement, subject to confidentiality obligations of the Agreement, Liferay or its designated agent may inspect Customer's use of the Cloud Services, including Customer's Accounts, Customer Content and Customer's records, to verify Customer's compliance with the Agreement. Customer will not interfere with Liferay's monitoring activities and will provide Customer Content or other information regarding Customer's Accounts and/or Customer Content as may be reasonably requested by Liferay to ensure that Customer's use of the Cloud Services complies with the Agreement.

## 9. Intellectual Property Assurances

### 9.1 Assured Content

**"Assured Content"** means the Liferay Content and Software made available to Customer by or on behalf of Liferay with the Cloud Services, as indicated in Schedule A, and to the extent that (i) Customer uses the Assured Content as part of and in connection with the Cloud Services and (ii) the relevant Units are covered by Cloud Services with an active Subscription Term at the time of the Claim (as defined in Section 9.2) or threatened Claim. In addition to any conditions set forth in this Section 9, Assured Content does not include any Liferay Content provided to Customer at no charge such as for promotional, evaluation, preview, or demonstration purposes.

### 9.2 Obligations

If an unaffiliated third party initiates a legal action against Customer (such action, a **"Legal Action"**) and the Legal Action includes an allegation that Customer's use of Assured Content directly infringes the third party's copyrights, patents or trademarks, or misappropriates the third party's trade secret rights (such allegation within a Legal Action, a **"Claim"**) and Customer has complied with and remains in compliance with the terms of this Section 9, then, subject to the other terms in this Section 9, Liferay will (i) defend Customer against the Claim and (ii) pay costs, damages and legal fees that are included in a final judgment against Customer (without right of appeal) or in a settlement approved by Liferay, that are attributable to Customer's use of the Assured Content with respect to such alleged or actual infringement.

### 9.3 Remedies

If an injunction against Customer's use of the Assured Content is obtained pursuant to a Claim, Customer's use of Assured Content is found by a court to infringe a third party's copyrights, patents or trademarks, or misappropriates the third party's trade secret rights or if Liferay believes that such a finding, injunction or a Claim is likely, then Liferay will, at its expense and option: (i) obtain the rights necessary for Customer to continue to use the Assured Content consistent with the Agreement; and/or (ii) modify the Assured Content so that it is non-infringing; and/or (iii) replace the infringing portion of the Assured Content with non-infringing code of similar functionality (subsections (i), (ii) and (iii) are the **"IP Remedies"**); provided that if none of the IP Remedies are available on a basis that Liferay finds commercially reasonable, then Liferay may terminate the Agreement and/or the applicable Order Form without further obligations to Customer under this Section 9.3 or any other liability for such termination, and, if Customer then returns the Assured Content that is the subject of the Claim, Liferay will refund any prepaid Fees for the applicable Cloud Services related to Assured Content based on the time remaining under the applicable Subscription Term(s) as of the effective date of such termination. If Customer chooses not to return the Software, Customer shall bear the sole risk of any costs, damages and/or attorney's fees arising from Customer's

continued use of the Assured Content following Customer's receipt of Liferay's termination notice and shall indemnify and hold Liferay harmless from such costs, damages and/or attorney's fees.

#### 9.4 Conditions

As conditions precedent to Liferay's obligations to Customer under Sections 9.2 and 9.3, Customer must comply with the following conditions: Customer must (i) be current in the payment of all applicable Fees prior to a Claim or threatened Claim; and remain current in such payments throughout the applicable Subscription Term, (ii) notify Liferay promptly, but in no event later than ten (10) days of receipt of any Claim; (iii) provide Liferay with the right to control and conduct the defense of the Legal Action (to the extent the Legal Action is related to the Claim) with counsel of its choice and to settle such Claim at Liferay's sole discretion; (iv) not assert or have asserted or have encouraged or assist any third party to assert, against Liferay or any of its Affiliates, customers or Business Partners, any claim that Liferay or a Liferay product infringes copyrights, patents or trademarks, or misappropriates trade secret rights and (v) cooperate with Liferay in the defense of the Claim.

#### 9.5 Exclusions

Notwithstanding the foregoing, Liferay will have no obligation under Sections 9.2 with regard to any Claim to the extent that it is based upon either (i) a modification of Assured Content not made by, or at the written direction of, Liferay; (ii) Liferay's compliance with any designs, specifications or instructions provided by Customer; (iii) use of the Assured Content in combination with a product, process, step, structure, data or business methods not provided by Liferay, if the infringement or misappropriation would not have occurred without the combined use; (iv) facts or circumstances constituting a breach of the Agreement; (v) use of the Covered Software without an IP Remedy for such Claim after Liferay has informed Customer of the availability of the IP Remedy for the Claim ; (vi) any use of the Assured Content by Customer other than for Customer's internal use (Customer's own internal use does not include, for example, providing third party use or access to ABIs, APIs or binaries of the Assured Content, or similar uses or making, offering to sell, selling, distributing and/or importing products that include Assured Content); (vii) use by Customer after notice by Liferay to discontinue use of all or a portion of the Assured Content to avoid infringement or misappropriation; (viii) a claim or lawsuit by Customer against a third party (or results from or arises out of such claim or lawsuit); or (ix) allegations associated with software, technology, products or other subject matter other than Assured Content (including, but not limited to allegations associated with the Legal Action other than the Claim, including any allegations that remain after the Claim is resolved), and Customer assumes full responsibility for fees, costs and damages associated with defending, settling and/or paying any resulting judgment or settlement in connection with software, technology or products that are not Assured Content.

#### 9.6 Liability

**9.6.1.** Liferay will not be obligated to pay any amounts in connection with a Claim related to any period of time during which Customer does not have active and fully-paid Cloud Services related to the Assured Content. Liferay will have no obligation to Customer under this Section 9 if, as of the start date of the applicable Cloud Services regarding the Assured Content, Customer had received notice of allegations of infringement or are had engaged in litigation concerning the subject matter of what would otherwise be a Claim under this Section 9 or with respect to a product substantially similar to the Assured Content. If the Legal Action includes a claim that both Assured Content and non-Assured Content infringe, then Customer will be responsible for a proportional share of common fees and costs in defending such claim based on the relative proportion of Assured Content and non-Assured Content.

**9.6.2.** IT IS LIFERAY'S INTENT TO PROVIDE CUSTOMER A SET OF PROTECTIONS UNDER THIS SECTION 9 RELATED TO CLAIMS (AS DEFINED IN SECTION 9.2 ABOVE). IT IS NOT LIFERAY'S INTENT TO EXPAND LIFERAY'S TOTAL LIABILITY TO CUSTOMER IN EXCESS OF THE LIABILITY LIMITATIONS, EXCLUSIONS AND EXCEPTIONS SET FORTH UNDER THE BASE AGREEMENT.

**9.6.3.** No express or implied warranties by Liferay or its Affiliates are created as a result of this Section 9. To the maximum extent permitted by law this Section 8 sets forth Customer's exclusive remedies and Liferay's sole obligations for claims arising from or related to copyrights, patents, trademarks, trade secrets or any other intellectual property rights and supersedes any other Liferay obligation related to the subject matter of this Section 8 (including, but not limited to, indemnification, breach of warranty, and/or breach of contract under the Agreement or otherwise and any implied warranty of non-infringement, which is hereby disclaimed). For the avoidance of doubt, the terms of Section 9.2 above shall apply in the place of, and Customer expressly waives any rights, and releases Liferay from any obligations, under the terms of any other warranties or terms relating to intellectual property rights or remedies, including without limitation similar terms or conditions that may be included in the Agreement. If there are any other applicable indemnity coverage or remedies available to Customer related to intellectual property infringement, Customer agrees that the total of all benefits payable under all such provisions will not exceed the total damages, costs, and expenses incurred by Customer, and that Liferay will pay only its proportional share of such total damages, costs, and expenses, subject to the limitations of liability set forth in the Agreement (including this Section 9).

#### 9.6.4. Allocation of Risk

THIS SECTION 9 ALLOCATES THE RISKS BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER OF THIS SECTION 9. THIS ALLOCATION IS AN INTRINSIC PART AND THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. WITHOUT SUCH ALLOCATION LIFERAY WOULD NOT HAVE ENTERED INTO THIS SECTION 9 AND THE AGREEMENT. LIFERAY'S PRICES FOR CLOUD SERVICES REFLECT THIS ALLOCATION OF RISKS AND THE DISCLAIMER OF WARRANTIES, EXCLUSIONS AND LIMITATION OF LIABILITY SPECIFIED HEREIN. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS CONTAINED IN THIS SECTION 9 APPLY, EVEN IF ANY REMEDY (INCLUDING ANY LIMITED OR EXCLUSIVE REMEDY) PROVIDED FOR IN THIS SECTION 9 FAILS IN ITS ESSENTIAL PURPOSE.

### 10. Data Privacy and Security

**10.1** Information as to whether, what and how Customer data may be processed through Cloud Services can be found at: <https://www.liferay.com/legal/cloud-services-data>.

**10.2** Customer agrees that for purposes of processing of Customer's Personal Data through the Cloud Services, Liferay acts as data processor and is appointed and authorized to process such Personal Data on behalf of Customer in accordance with Customer's instructions and in accordance with the terms of the Agreement (including Liferay's confidentiality obligations set forth in the Base Agreement) and only to the extent required in order to provide the Cloud Services to Customer but for no further purposes. The Parties agree that Customer's instructions are properly documented in the Agreement. Processing of Personal Data for any other purposes requires a prior written agreement between the Parties.



**10.3** In particular, when Processing Customer's Personal Data, Liferay and Liferay Affiliates act as "Service Providers" as defined in the CCPA. Liferay and Liferay Affiliates shall not (a) sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means, Customer's Personal Data to another business or a third party for monetary or other valuable consideration; or (b) retain, disclose, collect, sell, use, or otherwise process Customer's Personal Data for any purpose other than for the specific purpose of, and as necessary for, performing services for Customer pursuant to a written agreement(s). For clarity, Liferay may not retain, use, or disclose the Customer's Personal Data for any other commercial purposes or outside of the direct business relationship between Liferay and any Affiliate of the Parties. This CCPA Certification survives expiration or termination of any other agreement(s) between Liferay and Customer. Existing terms in such agreement(s) remain in effect except that this certification controls in the event of a conflict with such terms.

**10.4** Customer acknowledges that for purposes of delivering the Cloud Services Liferay engages the Affiliates and other subcontractors identified at [www.liferay.com/legal/cloud-services-data-as-sub-processors](http://www.liferay.com/legal/cloud-services-data-as-sub-processors), and that such sub-processors are located in territories world-wide that may not have the same level of protection as the country of the origin of Personal Data. Customer authorizes Liferay to engage the aforementioned and additional sub-processors ("Sub-processors"), provided that: (i) Liferay imposes obligations on the Sub-processors with regard to processing of Personal Data that shall be not less strict than those agreed between Customer and Liferay in this Section; (ii) as between Liferay and Customer, Liferay remains responsible for processing of Personal Data by its Sub-processors and liable for any violations of Liferay's obligations under the Agreement; (iii) Liferay maintains at all times the current list of Sub-Processors available at: <https://www.liferay.com/legal/cloud-services-data>; and (iv) Customer may object to an appointment of an additional Sub-processor by Liferay due to justified concerns regarding such Sub-processors' ability to comply with the data privacy and security obligations applicable to Liferay under the Agreement. Upon receipt of Customer's objection specifying the concerns, Liferay and Customer will enter into good faith negotiations to address Customer's concerns. If parties should not be able to agree on measures to resolve Customer's concerns in due time, either party may terminate the Agreement without liability to the other party.

**10.5** Throughout the term of the Agreement Liferay will maintain commercially reasonable and appropriate Technical and Organizational Measures ("TOM") to protect any Personal Data stored by Customer in the Cloud Service. Liferay may at its sole discretion update its TOM at any time and without notice to Customer, provided, however, that any such updates shall not materially reduce the security and data protection standards set forth in the TOM applicable as of the Order Form Effective Date of the Order Form governing Customer's use of the applicable Cloud Service.

**10.6** Each party shall comply with its respective obligations under the Data Protection Laws. As the party in control of Personal Data, Customer is at all times responsible for assessing if the contractual assurances, TOM implemented and backup functionalities offered by Liferay are appropriate for the Personal Data Customer intends to upload to the Cloud Services in accordance with the Data Protection Laws. Customer shall refrain from uploading to and/or, if required to assure compliance with the Data Protection Laws, remove, Personal Data from the Cloud Services to the extent processing of such Personal Data through the Cloud Service would constitute a violation of the Data Protection Laws applicable to such Personal Data. To the extent required under applicable laws, Customer will obtain any necessary consent from, provide any required notification and/or information to the data subjects, and reply to the requests of the data subjects exercising their rights under the Data Protection Laws with regard to the Personal Data Customer transfers, uploads or stores in the Cloud Services. As between the parties, Customer is solely responsible for its own secure use of the Cloud Services, including, without limitation, compliance with Customer's own security policies, its use and distribution of access credentials.

**10.7** Either party shall inform the other party of any security incident resulting in unauthorized alteration, disclosure, destruction, or loss of Customer's Personal Data stored in the Cloud Services without undue delay ("Security Incident"). The Parties shall cooperate in good faith to investigate the reasons and consequences of the Security Incident and take reasonable steps to address the Security Incident and prevent future Security Incidents. Liferay may provide such notifications either via email notification to the email address associated with the applicable Designated Contacts and/or notification within the Cloud Service.

**10.8** Upon Customer's written request to be made no later than fourteen (14) days upon expiration of an applicable Subscription Term, Liferay will provide Customer with access to the Cloud Services for up to a fourteen (14) day period starting from the date of receipt of Customer's request, solely for purpose of retrieval of Customer's Content, which includes Customer's Personal Data stored in the Cloud Services. Liferay shall have no obligation to maintain and will irretrievably remove the Content upon expiration of a thirty (30) day period after expiration of Customer's Subscription that provides for access to the Cloud Services.

**10.9** Where Customer is established in the EEA, Switzerland or UK and unless otherwise agreed between the parties in the applicable Order Form, the terms of the Data Processing Addendum available at [www.liferay.com/legal](http://www.liferay.com/legal) as of Order Form Effective Date ("DPA") apply to the processing of Customer's Personal Data by Liferay and are incorporated in the Agreement and Customer's execution of the applicable Order Form governing the use of Cloud Services by the Customer shall be deemed as its execution of the DPA.

**10.10** Where the Customer is not established in any of the territories mentioned in the previous sentence, Customer may enter into the DPA with Liferay, by adding a reference to the DPA to the Order Form applicable to the relevant Cloud Services, in which case the DPA will apply to the processing of Customer's Personal Data by Liferay and will be considered incorporated in the Agreement and Customer's execution of the applicable Order Form governing the use of Cloud Services by the Customer will be deemed as its execution of the DPA.

**10.11** In any event of inconsistencies between the terms of the DPA and this Section 10, the terms of DPA shall prevail in relation to the Customer's Personal Data.

**10.12** For clarification, either party understands and agrees that processing of the business contact data of the employees or third parties involved in the initiation or maintenance of the Agreement does not constitute data processing on behalf of that other party. Liferay processes such business contact data only for the purposes of the initiation and maintenance of the Agreement, performance or using Subscription Benefits of the Agreement, but for no other purpose in accordance with its privacy statement at: [www.liferay.com/privacy-policy](http://www.liferay.com/privacy-policy).

## 11. Quality of Service

Customer acknowledges and agrees that, in order for Liferay to provide a quality and responsive customer experience related to Customer's use of Cloud Services, Liferay will require, from time to time, Customer to promptly and comprehensively respond to Liferay's reasonable requests for information, including without limitation, Customer's testing requirements, use case descriptions, functional and operational goals and related information. As such, Customer agrees to respond

to such reasonable requests from Liferay through Customer's Designated Contacts in a timely manner and, with at least commercially reasonable means, cooperate with Liferay's gathering of all such information.

#### **12. Monitoring of Customer's Use of the Service**

Liferay may use solutions or technologies that monitor Customer's usage statistics while using the Cloud Services. Liferay will use such usage statistics related to Customer's use of the Cloud Service in accordance with the Privacy Policy posted at <https://www.liferay.com/privacy-policy> only to improve Liferay offerings, to assist a Customer in its use of the Liferay offerings and to monitor Customer's compliance with the use restrictions applicable to the Cloud Service as set forth in this Appendix. Liferay may collect and use, for any purpose, aggregated anonymous usage data about Customer's use of the Cloud Services.

#### **13. Service Level Agreement**

Liferay's obligations as to the maintenance periods and uptime commitment for Cloud Services are specified in **Schedule B**.





## SCHEDULE A: CLOUD SERVICES COMMERCIAL OFFERINGS

Software	Unit	Description	Support	Assured Content
<b>Liferay DXP</b>	Pod	Liferay DXP, and Free Liferay Subscription Apps	Yes	Yes
<b>Liferay CMS</b>	Pod	Liferay CMS, and Free Liferay Subscription Apps	Yes	Yes
<b>Liferay Commerce</b>	Pod	Liferay Commerce, and Free Liferay Subscription Apps	Yes	Yes
<b>Liferay Enterprise Search</b>	Pod	Liferay Enterprise Search	Yes	No

\* The applicable Support Tier for Add-On Subscriptions is the same as the underlying Subscription.

\*\* All trademarks, logos and brand names are the property of their respective owners. All company product and service names used in this Appendix and its related documents are for identification purposes only. Use of these names, trademarks and brands does not imply endorsement.



## SCHEDULE B: MAINTENANCE AND UPTIME

### 1. Definitions

**“Complete Shutdown”** means Cloud Services are completely unavailable for Customer to access through the designated web interface.

**“Downtime”** or **“DT”** is defined as the total number of minutes of Complete Shutdown occurring in a calendar month that is not Scheduled Maintenance or Excused Downtime. For example, twenty-two (22) minutes of DT in a calendar month result in a Monthly Availability of 99.94%

**“Monthly Availability Percentage”** or **“MA”** is the percentage calculated using the following equation:  $MA = 100\% - ((DT/43800) * 100\%)$ .

**“Scheduled Maintenance”** is the maintenance services conducted by Liferay at regular intervals and during the time windows specified in the Customer Portal and/or at <https://help.liferay.com/hc/en-us/articles/5290072467597> (each, a **“Scheduled Maintenance Window”**), which may lead to short periods of instability and, in some cases, downtime of up to four (4) clock hours.

**“Unscheduled Maintenance”** is maintenance services conducted outside of an applicable Scheduled Maintenance Window, required to resolve critical issues (e.g. security patches, bug fixes, etc.) for the Cloud Services.

### 2. Scheduled and Unscheduled Maintenance

Liferay intends to periodically update, upgrade, backup, improve and/or discontinue certain functionality associated with the Cloud Services and Customer’s user experience. As a result, the Cloud Services may be substantially modified. Liferay reserves the right at any time to change and/or discontinue any or all of the Cloud Services (including the underlying platforms and application programming interfaces (“**APIs**”) and/or application binary interfaces (“**ABIs**”) which may inhibit Customer’s ability to use existing applications. Liferay will use reasonable efforts to provide advance notice of material changes to the Services on the applicable Cloud Services website.

Liferay will perform Unscheduled Maintenance to address critical security and site reliability issues that may, in Liferay’s reasonable estimation, of causing severe or significant harm, loss or corruption to Customer Content or the Cloud Services. Liferay will address lower severity security and site reliability issues through Scheduled Maintenance.

### 3. Availability and Service Credits

#### 3.1 Monthly Availability

Liferay conducts continuous automatic and manual monitoring of the Cloud Services to proactively address any potential performance issues.

Liferay will use commercially reasonable efforts to maintain Monthly Availability for the Cloud Services at or above 99.80%, except for: (a) Unscheduled Maintenance resulting in planned downtime of which Customer has been given advance notice or Scheduled Maintenance (together **“Planned Downtime”**), or (b) any unavailability caused by circumstances beyond Liferay’s reasonable control, including without limitation, force major, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Liferay employees), internet or web service provider failures or delays, or denial of service attacks (**“Excused Downtime”**).

Customer may view information about the average downtime for all Cloud Services’ assets and the applicable region(s), including historical data about downtimes, root cause and solution, through the applicable Cloud Services user portal.

### 4. Service Credits

In the event that Monthly Availability in a calendar month falls below 99.80%, Customer may request service credits (**“Service Credits”**). Such request must be submitted to Liferay in writing no later than five (5) working days from the end of the concerned calendar months. The Service Credit amount shall be calculated by applying the percentage indicated in the table below to the pro rata portion of the Fees paid by Customer for the use of the applicable Cloud Services in the concerned calendar month:

Table 4

MA Percentage	Service Credit calculation percentage
99.50 to 99.79%	5%
99.00 to 99.49%	10%
Below 98.99%	25%

Service Credits owed by Liferay to Customer shall be credited to Customer’s account associated with the affected Cloud Services and applied to future or additional purchases of Cloud Services. In the event of a termination by Customer of all of Customer’s Cloud Services due to Liferay’s material breach of the Agreement, Liferay shall refund Customer the monetary amount (in the currency in which Subscription Fees were paid) equal to the Service Credits unused and remaining in Customer’s account. Any Service Credits provided pursuant to this Schedule B shall constitute Liferay’s sole liability, and Customer’s sole and exclusive remedy, for any failure to meet the Monthly Availability Percentage.