



# komodo cms

END USER LICENSE AGREEMENT (EULA)

### IMPORTANT – READ CAREFULLY

- 1.1 This End User License Agreement (EULA) is a legal agreement between you and Komodo CMS Pty Ltd for the Komodo Content Management System (CMS) product, connected technologies and services.
- 1.2 BY USING THE KOMODO CMS PRODUCT YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU ARE NOT PERMITTED BY LAW TO USE THE KOMODO CMS PRODUCT OR RELATED SERVICES.

### DEFINITIONS

- 2.1 In this agreement **you** and **your** refers to the entity that has entered into this agreement and its affiliates and agents, and **we, us** or **our** refers to Komodo CMS Pty Ltd and its affiliates and agents. In addition, the following definitions apply:
- 2.2 **Affiliate** means
  - (i) with regard to you, any legal entity that you own, which owns you, or which is under common ownership with you, and
  - (ii) with regards to us, any legal entity that we own, which owns us, or which is under common ownership with us;
- 2.3 **Agent** means a person or legal entity authorised by the party to enter into an agreement, negotiate, or transact on their behalf;
- 2.4 **Anonymous user** or **visitor** is a user who has public or generally available access to the web pages produced by the product and is not required to provide a username or password and who does not have access to the content management or administrative functions of the product. For the purpose of this EULA, an anonymous user is not considered to be a user of the product and is not a party to this agreement;
- 2.5 **Authenticated user** or **product user** is a user of the product who accesses the content management or administrative functions of the product using a password and username. The number of such users is limited by the product subscription level as detailed in the Certificate of Entitlement (CoE);
- 2.6 **Komodo CMS** means, depending upon context,
  - (i) 'us',
  - (ii) the 'product' and related 'service deliverables', or
  - (iii) the brand, trademark and other intellectual property owned by us;
- 2.7 **Installation** means depending upon context,
  - (i) a deployed version of the product, or
  - (ii) the process, settings and act of installing and deploying the product, or
  - (iii) a specific installation of the product;
- 2.8 **Modules** are additional components purchased to add functionality to the product. Purchased additions are detailed in the Certificate of Entitlement (CoE);
- 2.9 **Ownership** means, for the purposes of the definition of 'affiliate' above, more than 50 per cent ownership or effective control;



- 2.10 **Product** means the Komodo Content Management System, all related components, modules, custom enhancements, documentation, marketing materials, license agreements and other branded or identified component parts;
- 2.11 **Product details** are specifics relating to the product, outlining the product and delimiting the agreement or product subscription level;
- 2.12 **Product development agreement or PDA** is an agreement provided by us to partner organisations or licensed organisations to allow either
- (i) resale of the product,
  - (ii) code access for limited development purposes, or
  - (iii) specific code access to third parties for product integration or custom enhancement.
- A PDA must be in writing and signed by us;
- 2.13 **Service deliverables or services** are additional or included components, services and materials which may form part of a Komodo CMS installation. These may include custom development, training, support, hosting, upgrades, documentation, design services and other consultancy;
- 2.14 **Software**, depending on context, means
- (i) the Komodo CMS product,
  - (ii) the source code of the Komodo CMS product,
  - (iii) the Komodo CMS product as installed for a particular installation,
  - (iv) other third-party software, or
  - (v) other software required for the proper operation of the Komodo CMS product (see Specified Operating Environment);
- 2.15 **Subscription level** is the variant of the product, generally defined as either standard, professional, enterprise or custom. The product subscription level determines the product pricing and feature set, as well as certain product limits and salient parts of the user documentation. The Certificate of Entitlement (CoE) details the licensed subscription level;
- 2.16 **Unbranded installation** is a licensed installation of the Komodo CMS product that does not contain the 'Powered by Komodo CMS' icon/link on the home page or primary page of the site. Such installations are provided by special exemption and the payment of the 'Komodo CMS brand removal fee' relevant to the product subscription level;
- 2.17 **Use** means to copy, install, use, access, display, run or otherwise interact with Komodo CMS;
- 2.18 **User documentation** is the instructional and informational documentation, either electronic or physical copy, that is provided with the Komodo CMS product and applies to the specific installation.

### USE AND OWNERSHIP

- 3.1 The Komodo CMS software is owned by us and is copyrighted and licensed, not sold.
- 3.2 Komodo CMS grants you a non-exclusive perpetual license to the product as described in the Certificate of Entitlement and detailed in this agreement, provided that you comply with the terms of this EULA.



- 3.3 We do not transfer any ownership rights in the product and reserve all rights not expressly granted.

#### RESTRICTIONS OF USE

- 4.1 You are licensed to use the software up to the level of use specified in the Certificate of Entitlement.
- 4.2 You may not:
- (i) Reverse engineer, de-compile, alter or disassemble the product or service deliverables, except to the extent expressly permitted by applicable law, or where expressly permitted under a Product Development Agreement (PDA);
  - (ii) Transfer, sub-license, sell, rent, lease, lend, duplicate, or otherwise translate the product or service deliverables without express written consent from us, detailing the nature of the exception or where expressly permitted under a PDA;
  - (iii) Provide commercial hosting services utilising the product or services delivered, including charging any user for product access, unless expressly granted in writing by us;
  - (iv) Remove or obscure any copyright, trademark, patent or notices that appear on the product;
- 4.3 You are required to:
- (i) Operate the delivered software under the terms of this agreement and in a manner consistent with the operational instructions contained in the user documentation relevant to your licensed installation and product subscription level;
  - (ii) Ensure that any authenticated user who uses the product does so only in compliance with the terms of this agreement;
  - (iii) Comply with all applicable international and national laws that apply to this class of product;
  - (iv) The product may include code that operates in a disabling or limiting function to enforce the terms of this agreement, prevent software piracy, prevent unauthorised use, or to enforce subscription level limits as detailed in the Certificate of Entitlement. You are not permitted to tamper with such devices.

#### SUBSCRIPTION LEVEL

- 5 The general terms and conditions of this agreement shall apply to the offering regardless of your subscription level (i.e. standard, professional, enterprise or custom solution), unless specifically exempted in the Certificate of Entitlement (CoE) or under a Product Development Agreement (PDA).

#### PRODUCT WARRANTY

- 6.1 Komodo CMS warrants that each commercial version of the product will perform substantially in accordance with our user documentation for the specified version and product subscription level. This warranty is valid for a period of one year from the date of installation. This warranty does not apply if the failure of the product has resulted from accident, abuse, misapplication, breach of this agreement or from the actions of a third

party. If you notify us in writing within the warranty period that the product does not meet this warranty, we will at our option, either

- (i) repair or replace the product, or
- (ii) return the price paid for the product. To the maximum extent permitted by law, this is your exclusive remedy for any failure of the product.

- 6.2 To the maximum extent permitted by law, free and beta products are provided 'as-is' without warranty.
- 6.3 We warrant that all services provided by us will be performed in a good workmanlike manner.
- 6.4 TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE DISCLAIM AND EXCLUDE ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS EULA, INCLUDING BUT NOT LIMITED TO WARRANTIES, QUALITY, MERCHANTABILITY, FITNESS FOR PURPOSE, AND NON-INFRINGEMENT WITH RESPECT TO THIRD PARTIES.

#### PRIVACY

- 7 You agree to allow Komodo CMS to store and use your contact information. This information will be used in connection with our business relationship and for uses consistent with Komodo CMS's business activities, including marketing of the Komodo CMS product. A copy of Komodo CMS's privacy statement is available from the Komodo CMS website at [www.komodocms.com](http://www.komodocms.com)

#### PRODUCT IDENTIFICATION

- 8.1 All product subscription levels include product identification marks. These include comments in the source code and a 'Powered by Komodo CMS' icon that functions as a web link to the Komodo CMS home page which is included on at least the primary page of the website(s) you produce using the Komodo CMS product. These marks identify the ownership of the product and provide a business source to Komodo CMS for the further development of the product. You agree not to tamper with these identifying elements. In addition, this agreement and the use of these marks does not grant you any right, title or interest in the trademarks of Komodo CMS or associated entities.
- 8.2 Under certain circumstances, we will agree to the removal of the 'Powered by Komodo CMS' icon after payment of the published 'Komodo CMS brand removal fee' relevant to the product subscription level. Such an exemption must be approved in writing or included in the Certificate of Entitlement (CoE).

#### INTELLECTUAL PROPERTY

- 9.1 This agreement does not include the transfer of any intellectual property between us and you.
- 9.2 We retain ownership, copyright, moral rights and other intellectual property rights pertaining to all products and services delivered under this agreement, including all agreements, specifications, user documentation, marketing materials, developed code, software and commissioned content unless otherwise stated or exempted in writing.
- 9.3 Ownership, copyright, moral rights and other intellectual property rights pertaining to all content entered into the product for storage, delivery, manipulation or other purposes rests with the legal owner of the content and is in no way altered by the terms of this agreement or the Komodo CMS product.



- 9.4 We warrant that any intellectual property embodied in or used by us in the product or in the delivery of services is either the sole property of Komodo CMS Pty Ltd or that we are legally entitled to use such intellectual property for the provision of the product and services outlined in this agreement.
- 9.5 You warrant that you are the owner or otherwise legally entitled to use content stored in or delivered by our product or services. Furthermore, you indemnify us against any action, claim, suit or demand for, or liability to pay compensation or damages and costs or expenses arising out of or in respect of any breach by you or caused by you of any third party's intellectual property rights.

#### LIMITATION OF LIABILITY

- 10.1 To the maximum extent permitted by law, our liability for direct damages will be limited to the amount you have paid for the product. The limitation contained in this paragraph will not apply with respect to:
- (i) our obligations to defend third party claims of patent, copyright, trademark or intellectual property infringement;
  - (ii) our liability for gross negligence or wilful misconduct, to the extent caused by us and awarded by a court of final adjudication;
  - (iii) our confidentiality obligations.
- 10.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOSS OF PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING IN CONNECTION WITH ANY AGREEMENT, PRODUCT, FIX OR SERVICE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. THIS EXCLUSION OF LIABILITY DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATION OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.
- 10.3 The limitations and exclusions of liability in this agreement apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranty, or any other legal theory.

#### TERMINATION

- 11 This agreement will remain in effect until terminated. We provide a non-exclusive perpetual license to the product as described in the Certificate of Entitlement (CoE) subject to your compliance with this EULA. You may terminate this agreement by giving at least 30 days notice in writing and ceasing to use the Komodo CMS product. You must also delete all relevant computer files and return any Komodo CMS materials. The sole effect of terminating this agreement will be to terminate the ability of either party to enter into subsequent product or service agreements under the terms of this license agreement. All terms and conditions of this agreement will continue in effect unless and until explicitly expired under this EULA.

#### CHARGES

- 12.1 The amount payable for the software license is a one-time charge unless stipulated in the Certificate of Entitlement (CoE).



- 12.2 If you wish to increase the level of use, you should notify Komodo CMS and pay any applicable charges. You will be issued with a revised Certificate of Entitlement (CoE) reflecting the product subscription level, revised product limits, incorporated modules, custom enhancements, product variant or other stipulations.
- 12.3 If any authority imposes a duty, tax, levy or fee upon the software or services, then you agree to pay the amount specified or supply us with exemption documentation.

#### **SPECIAL OPERATING ENVIRONMENT**

- 13.1 The software's specifications and specified operating environment information is summarised in the Certificate of Entitlement (CoE).
- 13.2 It is a condition of use that the software is deployed and used in conjunction with the specified operating environment. Failure to meet this condition will breach the warranty clause of this agreement.

#### **UPGRADES**

- 14 To purchase or use a product identified as an upgrade, you must be licensed to use the product identified by Komodo CMS as eligible for the upgrade. After upgrading, you may no longer use the product that formed the basis for your upgrade eligibility.

#### **CONFIDENTIAL INFORMATION**

- 15.1 Confidential information means information identified in writing as proprietary or confidential, it also includes non-public information regarding either party's products, marketing, promotions, business processes, financial data and negotiated terms of agreement. Confidential information does not include information which;
- (i) the recipient developed independently,
  - (ii) the recipient knew before receiving it under the relevant agreement, or
  - (iii) information which becomes public other than by a breach of an obligation of confidentiality in this EULA.
- 15.2 Neither party will use the other's confidential information without the other's written consent except,
- (i) in the furtherance of this business relationship,
  - (ii) to obtain advice from legal or financial consultants, or
  - (iii) as required by law.
- 15.3 Both parties will take reasonable precautions to safeguard each other's confidential information, at least equivalent to those used to safeguard their own confidential information. In the event of discovery of unauthorised disclosure of information, the discovering party will notify the other and cooperate in any reasonable way to regain possession of the information and minimise potential loss.
- 15.4 Komodo CMS provides a number of support and product feedback mechanisms to improve the quality of the product. By using any such mechanism or providing unsolicited ideas or suggestions, you agree that all such content is not confidential and becomes the sole property of Komodo CMS without compensation.



#### NOTICES

- 16 All notices, requests and communications pertaining to this agreement must be sent by post, express courier, or email to the normal business address of the relevant party. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, or email confirmation of delivery.

#### ASSIGNMENT

- 17 Neither party may assign the agreement in whole or part without the written consent of the other.

#### SEVERABILITY

- 18 If any provision of this agreement is held to be illegal, invalid, or unenforceable, the remaining provisions will remain in force and effect and the parties will amend the agreement to give effect to the stricken clause to the maximum extent possible.

#### WAIVER

- 19 No waiver of any breach of this agreement shall be a waiver of any other breach. No waiver shall be effective unless made in writing by the waiving party.

#### FORCE MAJEURE

- 20 To the extent that either party's performance is prevented for reasons beyond that party's control, then that party will not be liable, so long as performance is resumed as soon as practical after the cause no longer exists.

#### SURVIVAL

- 21 Provisions regarding product use, restrictions on use, warranty, limitation of liability, confidentiality, intellectual property, and specified operating environment will survive the termination of this agreement.

#### NON-EXCLUSIVITY

- 22 This agreement is non-exclusive.

#### APPLICABLE LAW

- 23 This agreement is entered into in the State of Victoria, Australia, and you agree that all matters including all disputes, shall be governed and construed in accordance with the laws of the State of Victoria, and waive any objection to such a jurisdiction or venue.

#### EXECUTION

- 24.1 I have read and understand this EULA and I hereby agree with, accept, and consent to, the terms and conditions of this agreement.
- 24.2 I accept and understand that by purchasing or using the product, I have indicated my acceptance of the terms and conditions of this agreement. Where my acceptance has been indicated electronically, I hereby waive any claim or right that I may have to assert that my electronic acceptance is not the equivalent of, or deemed as, a valid signature to this agreement. This agreement is executed by Komodo CMS Pty Ltd.