

# Devsource Limited t/a DeveloperFair Terms and Conditions

## 1. Acceptance of Terms and Conditions

- 1.1 This Agreement (the “**Agreement**”) is a legal contract between you (the “**User**”, “**you**”) and Devsource Limited, a private limited company in Ireland, trading as DeveloperFair (“**DeveloperFair**”, “**Devsource**”, “**we**” or “**us**”). You must read, agree with and accept all of the terms and conditions contained within this Agreement in order to use our platform or website located at DeveloperFair.com (collectively the “**Site**”) and related software and services (collectively with the Site, the “**DeveloperFair Platform**”).
- 1.2 DeveloperFair may make modifications, deletions and/or additions to this Agreement (“**Changes**”) at any time. Changes will be effective: (i) fourteen (14) days after DeveloperFair provides notice of the Changes, except for Changes addressing new functions of the Service or Changes made for legal reasons will be effective immediately. Your continued use of the DeveloperFair Platform after the date any such changes become effective constitutes your acceptance of the new Agreement.
- 1.3 Your access to and use of the DeveloperFair Platform is also governed by information, guidelines and policies made available on the Site, including but not limited to the DeveloperFair Privacy Policy, which can be access at DeveloperFair.com/privacy. To the extent that there are any conflicts between the terms and conditions of this Agreement and the Site, the terms and conditions of this Agreement will govern.
- 1.4 YOU UNDERSTAND THAT BY USING THE DEVELOPERFAIR PLATFORM, YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT ACCEPT THIS AGREEMENT IN ITS ENTIRETY, YOU MAY NOT ACCESS OR USE THE DEVELOPERFAIR PLATFORM. IF YOU AGREE TO THIS AGREEMENT ON BEHALF OF AN ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY TO THIS AGREEMENT. IN THAT EVENT, “USER”, “YOU” AND “YOUR” WILL REFER AND APPLY TO THAT ENTITY.

## 2. The DeveloperFair Platform

- 2.1 The “DeveloperFair Platform” is a website designed to find and connect Clients and Developers. The DeveloperFair Platform enables Clients and Developers to buy and sell software development related Services online. If a Client accepts a Developer to work on their project, a contract (the “**Service Contract**”) is formed directly between such Client and Developer subject to the terms specified in this Agreement.
- 2.2 DeveloperFair collects payment from the Client on behalf of the Developer. DeveloperFair charges Clients a fee for use of the DeveloperFair Platform and the

services it provides (the “**DeveloperFair Fees**”). This fee is fixed and is included in the per hour rate charged to the Client.

### **3. Eligibility**

- 3.1 The DeveloperFair Platform may only be used by legal entities who are at least eighteen (18) years old and are otherwise capable of forming legally binding contracts under applicable law.
- 3.2 If you are entering into this Agreement on behalf of a company, business or other legal entity, you represent that you have the authority to bind such entity and its affiliates to this Agreement, in which case “Client” shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with this Agreement, you must not accept this Agreement and may not use the service.

### **4. Expectations**

- 4.1 DeveloperFair expects a high standard and level of courtesy, respect and professionalism from all of its Clients and Developers toward each other.
- 4.2 Users may be held legally responsible for damages suffered by other Users, DeveloperFair or any third party as a result of legally actionable or defamatory comments, remarks, or other information or content posted to the DeveloperFair Platform.
- 4.3 Users are to comply with all laws applicable to them or their activities, and with all DeveloperFair Policies. These policies may be modified from time to time at DeveloperFair’s discretion, and the currently effective policies will be deemed to be part of this Agreement.
- 4.4 Unless otherwise specifically agreed upon by DeveloperFair in writing (and notwithstanding any other provision of this Agreement), all activity relating to Service Contracts will be performed by and only by Developer.
- 4.5 The Developer agrees that notwithstanding any rights of publicity, privacy or otherwise (whether or not statutory) anywhere in the world and without any further compensation, DeveloperFair may and is hereby authorised to (and to allow others to) use Developer’s name, picture, portrait, photograph, video and/or likeness in all forms, media and manners (“**Likeness**”), in perpetuity and without any restriction as to changes or alterations (including but not limited to composite or distorted representations or derivative works of Likeness made in any medium) in connection with promotion of its business, products or services. The Developer waives any right to inspect or approve any intermediary version(s) or finished version(s) of the results of the use of said Likeness.

- 4.6 When submitting any content to or otherwise using the DeveloperFair Platform, you agree not to post or transmit to or from the DeveloperFair Platform
- I. any unlawful, hateful, racially or ethnically offensive, threatening, libellous, defamatory, obscene, pornographic, or other material or content that would violate rights of publicity and/or privacy or that would violate any law;
  - II. anything which impersonates another person or represents yourself as affiliated with us, our staff or other industry professionals;
  - III. any material or content that infringes, misappropriates or violates any third party rights, including but not limited to copyright, trademark, patent right or other proprietary right of any third party;
  - IV. anything which solicits a user's password or other account information;
  - V. any falsehoods or misrepresentations that could damage us, our users or any third party;
  - VI. any private information concerning another person, without their permission;
  - VII. anything which harvests user names, addresses, or email addresses for any purpose; and
  - VIII. any viruses or other computer instructions or technological means whose purpose is to disrupt, damage, or interfere with the use of computers or related systems.
- 4.7 DeveloperFair is not legally responsible for any remarks, information or other content posted or made available on the DeveloperFair Platform by any User or third party, even if such information or content is defamatory or otherwise legally actionable. DeveloperFair is not legally responsible for any negative outcome of the relationship between Clients and Developers. DeveloperFair is not responsible for and does not monitor or censor content for accuracy or reliability. However, DeveloperFair reserves the right to remove or restrict access to any information or content posted or made available on the DeveloperFair Platform if ordered to do so by a government authority or if DeveloperFair considers such information or content to be in violation of this Agreement, or to be unlawful, immoral or harmful.

## **5. Security**

- 5.1 All information provided to DeveloperFair by the User must be real and verifiable. Each User account must be used by only person.
- 5.2 DeveloperFair reserves the right to verify and validate User information at any time, including but not limited to validation against third party databases or the verification of one or more official government or legal documents that confirm the User's identity.
- 5.3 DeveloperFair may request additional documentation in order to comply with any relevant laws or regulations. You must provide such requested documentation within 10 days of DeveloperFair requesting it.

- 5.4 You authorise DeveloperFair, directly or through third parties, to make any inquiries necessary to validate your identity and confirm your ownership of your email address or financial instruments. Failure to provide information about you and your business when requested is a violation of this Agreement.
- 5.5 By using your User account, you acknowledge and agree the DeveloperFair account security procedures are commercially reasonable. You may not allow third parties to use this password to perform any action.
- 5.6 You shall be responsible for maintaining the security of your Account and passwords (including but not limited to administrative and user passwords) and files, and for all uses of your Account with or without your knowledge or consent.

## **6. Using the DeveloperFair Platform**

- 6.1 All interaction and communication through the DeveloperFair Platform must be conducted in English, regardless of any other language competencies of Users. All communications must be professional in nature, free of offensive language or advertisements for other products or services.
- 6.2 Projects may not request any service that is illegal or violates intellectual property rights, copyrights or the terms of service of another service, product or website. Projects related to the creation of adult or explicit content are prohibited.
- 6.3 Users agree to respond to communications and requests for information as promptly as is reasonable.
- 6.4 Any requests for feedback from Clients should be responded to within a reasonable period of time.
- 6.5 Developers agree to respond to all communications with Clients as promptly as is reasonable, depending on the work schedule agreed.
- 6.6 “Reasonable” in the context of Sections 6.3, 6.4 and 6.5 depends on the agreed schedule of work and DeveloperFair reserves the right to make judgement as to what is and is not a reasonable period of time to respond.
- 6.7 By applying to a project, the User is attesting that he/she has the required skills and ability to perform the requested Services. DeveloperFair reserves the right, but does not have the obligation, to verify the skill and ability of the Developer.
- 6.8 You agree not to access the DeveloperFair Platform by any means other than through the interface that is provided by DeveloperFair for use in accessing the DeveloperFair Platform. Any rights not expressly granted herein are reserved and no license or right to use any trademark of DeveloperFair or any third party is granted to you in connection with the DeveloperFair Platform.

## 7. Terms for Clients and Developers

- 7.1 Clients and Developers agree that all Projects and Service Contracts between any Client and Developer shall:
- I. include the terms and conditions provided in this Section (Section 7)
  - II. name DeveloperFair as an express third party beneficiary under the Service Project (but not as a party to that agreement); and
  - III. make no representations or warranties or enter into any Projects on behalf of DeveloperFair
- 7.2 Developers shall perform services in a professional manner and deliver the agreed-upon work from the Service Contract.
- 7.3 Clients shall pay Developers the agreed-upon fees for delivery of the work in the Service Contract. All amounts paid by a Client to a Developer must be paid through the DeveloperFair Platform to DeveloperFair as the Developer's agent, and a Client's obligation of payment to a Developer is met when payment is made to DeveloperFair.
- 7.4 Clients may terminate at any time but may not recover any payments made to the Developer unless agreed by the Developer. The Developer may terminate an agreement at any time if no payments have been made.
- 7.5 Clients grant Developers a limited, non-exclusive, revocable (at any time, at Client's absolute discretion) right to use the Client's Products as necessary for the performance of the services. Clients reserve all other rights and interest, including, without limitation, all Proprietary Rights, in and to the Client's Products.
- 7.6 Upon completion or termination of the Service Contract, or upon written request by the Client, Developers shall immediately return all Client's Products to the Client and further agrees to purge all copies of Client's Products and work contained in or on Developer's premises, systems, or any other equipment otherwise under Developer's control. Developers agree to provide written certification to the Client certifying the return or purging of Client's Products within ten (10) days after the receipt of the Client's written request to certify.
- 7.7 Any copyrightable works or works for hire prepared by the Developer in connection with a Project for a Client shall be owned by the Developer until payment has been made by the Client.
- 7.8 The Developer hereby irrevocably agrees to grant, and hereby grants, to the Client an exclusive (excluding the Developer), perpetual, irrevocable, unlimited, worldwide, fully paid, and unconditional license to use and commercialise Work in any manner now known or in the future discovered.

To the extent such license grant is not fully valid, effective or enforceable under applicable law, the Developer hereby irrevocably agrees to grant, and hereby grants, to the Client, such rights as the Client reasonably requests in order to acquire, as close as possible, all rights equivalent to full legal ownership. In order to ensure that the

Client will be able to acquire, perfect and use such Proprietary Rights, the Developer will:

- I. transfer possession, ownership, and title to media, models, and other tangible objects containing Work to the Client;
- II. sign any documents at the Client's request to assist the Client in the documentation, perfection and enforcement of its rights; and
- III. provide the Client with support and reasonable access to information for recording, perfecting, securing, defending, and enforcing such Proprietary Rights. The Developer also irrevocably authorises the Client to act and sign on Developer's behalf and take any necessary steps in order to protect the Client's rights under this Agreement.

7.9 In the case that under applicable law, the Developer retains any rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "**Moral Rights**") or other inalienable rights to Work or Confidential Information under this Agreement, the Developer irrevocably agrees to waive and renounce, and hereby waives and renounces, in favour of the Client, all such rights, or, to the extent Developer cannot waive such rights, the Developer agrees not to exercise such rights, until the Developer has provided prior written notice to the Client and then only in accordance with any reasonable instructions that the Client issues in the interest of protecting its rights. The Developer agrees to assist the Client in every proper way to obtain and enforce the Proprietary Rights and other legal protections for the Work in any and all countries. The Developer will sign all documents that the Client may reasonably request for use in obtaining and enforcing such protection, including, but not limited to, any assignment deed which the Client may select at its sole discretion. Developer's obligations under this Section will continue even after the Developer deregisters from or ceases use of the DeveloperFair Platform. The Developer appoints the Client as Developer's attorney-in-fact to execute documents on Developer's behalf for the purposes set forth in this Section.

7.10 The Developer shall ensure that no Work created or delivered by the Developer includes any pre-existing software, technology, Proprietary Rights or other intellectual property, whether such pre-existing intellectual property is owned by the Developer or a third party including, without limitation, code written by proprietary software companies or developers in the open source community (collectively "**Pre-existing IP**") without obtaining the prior written consent of the Client to the inclusion of such Pre-existing IP in the Work. The Developer acknowledges that, without limiting any other remedies, the Developer shall not be entitled to payment for, and shall refund any payments made to the Developer for, any services performed on a project if the Work contains any Pre-existing IP that was not approved in accordance with this Section.

7.11 The terms and conditions set forth in this Section 7 and Section 8 and any additional or different terms expressly agreed, in writing, by the Client and the Developer shall

constitute the entire agreement and understanding of the Client and the Developer with respect to each Service Contract and shall cancel and supersede any other prior or contemporaneous discussions, agreements, representations, warranties, and/or other communications between them. Notwithstanding the foregoing, the Client and the Developer shall always remain subject to the terms of this Agreement.

- 7.12 The Client and the Developer must communicate to each other through the approved methods advised by DeveloperFair. Any communication outside of the DeveloperFair Platform or any unapproved methods is forbidden and is a violation of this Agreement.
- 7.13 In the event that a Client wishes to terminate development of a Project, for any reason, DeveloperFair, in its sole discretion, shall determine how much deposit should be returned to the Client (if any) depending on the circumstances.

## **8. Acknowledgements by the Client and the Developer of DeveloperFair's role**

- 8.1 The Client assumes all liability for proper classification of workers as independent contractors or employees based on applicable legal guidelines. This Agreement does not represent or create a partnership between the Client and the Developer.
- 8.2 The Developer is solely responsible for the manner and hours in which the Services are performed under this Agreement.
- 8.3 The Developer acknowledges that DeveloperFair does not, in any way, supervise, direct, or control Developer's work. DeveloperFair does not set Developer's work hours or location of work. DeveloperFair will not provide the Developer with any training or any equipment, labour or materials needed for a particular project.
- 8.4 DeveloperFair will not deduct any amount for any taxes as in the case of an employee. The Client and the Developer will be solely responsible for all tax returns and payments required to be filed with any tax authority with respect to Developer's performance of Services.
- 8.5 The Client and the Developer agree to indemnify, hold harmless and defend the Indemnified Parties (as hereinafter defined) from any and all claims arising out of or related to their Service Contract, including but not limited to claims that the Developer was misclassified as an independent contractor, any liabilities arising from a determination by a court, arbitrator, government agency or other body that the Developer was misclassified as an employee (including, but not limited to, taxes, penalties, interest and attorney's fees), any claim that DeveloperFair was an employer or joint employer of Developer, as well as claims under any employment-related laws, such as those relating to employment termination, employment discrimination, harassment or retaliation, as well as any claims for overtime pay, sick leave, holiday or vacation pay, retirement benefits, worker's compensation benefits, unemployment benefits, or any other employee benefits.

- 8.6 Clients and Developers recognise, acknowledge and agree that Clients and Developers are not employees, agents, partners or joint venturers of DeveloperFair and that DeveloperFair does not, in any way, supervise, direct, or control Work or services.
- 8.7 DeveloperFair is not a party to any Service Contracts between Clients and Developers.
- 8.8 DeveloperFair makes no representations as to the reliability, capability, or qualifications of any Developer or the quality, security or legality of any Work, and DeveloperFair disclaims any and all liability relating thereto.

## **9. Fees and Payment**

- 9.1 Projects on the DeveloperFair Platform are calculated on an Hourly agreement. Payments must be made using the DeveloperFair Platform.
- 9.2 Payments are made to Developer's on a two week rolling basis, retrospectively. For example, any hours worked in the first two weeks of the year will be paid to the Developer on the fourth week of the year.
- 9.3 Payment to a Developer is subject to verification of timesheets by the Client and/or DeveloperFair. In the event a timesheet is flagged by the Client for any reason DeveloperFair will investigate and will have absolute authority to decide whether or not to release funds, whether in full or a partial release of funds.
- 9.4 Clients must make all payments through the DeveloperFair Platform. Any action that encourages or solicits complete or partial payment outside of the DeveloperFair Platform is a violation of this Agreement.
- 9.5 In the event a Client is found in violation of Section 9.4 of this Agreement, it may result in a termination of their account and the Client shall pay DeveloperFair €3,000.
- 9.6 Developers may not accept any payments from a Client except through the DeveloperFair Platform. The Developer must notify DeveloperFair immediately if the Client attempts to make a payment to the Developer outside of the DeveloperFair Platform.
- 9.7 Arrangement can be made for the Client to buyout the right to work with the Developer outside of the DeveloperFair Platform. The Client must contact DeveloperFair to pursue this arrangement.
- 9.8 You agree that you will not receive interest or other earnings on the funds that DeveloperFair handles as your agent and places in commingled accounts. In consideration for your use of the DeveloperFair Platform, you irrevocably transfer and assign to DeveloperFair any ownership right that you may have in any interest that may accrue on funds held in commingled accounts. This assignment applies only to interest earned on your funds, and nothing in this Agreement grants DeveloperFair any ownership right to the principal of the funds you maintain with DeveloperFair. In addition to or instead of earning interest on commingled accounts, DeveloperFair may



receive a reduction in fees or expense charged for banking services by the banks that hold your funds.

- 9.9 If a Client fails to pay amounts due under this Agreement, by any means, any work-in-progress will be stopped. Without limiting other available remedies, the Client must reimburse the Developer for amounts due upon demand, plus any related fees, charges or penalties.
- 9.10 DeveloperFair reserves the right, in its absolute discretion, to place a hold on funds if DeveloperFair suspects monies may be subject to charge back or if fraud is suspected. DeveloperFair will release a hold as soon as deemed appropriate.
- 9.11 All DeveloperFair Fees are non-refundable, whether or not Service Contracts were satisfactorily completed.
- 9.12 DeveloperFair shall have no responsibility in determining, remitting, or withholding any taxes applicable to the Developer's fees. Developers shall be responsible for their own tax affairs. DeveloperFair has the option, but not the obligation, to assist Developers by providing statements of monies earned through the DeveloperFair Platform.
- 9.13 In the event it is required, Developers agree to provide DeveloperFair with any relevant tax documents as may be reasonably requested.
- 9.14 The Client hereby authorises DeveloperFair and its Payment Processor to run credit card authorisations on all credit cards provided by the Client, to store credit card details as Client's method of payment for Work, and to charge the Client's credit card.
- 9.15 DeveloperFair shall not be liability for any delays or fees associated with paying the Developer.

## **10. Dispute Resolution**

- 10.1 In the unlikely event that there is a Dispute between any Users of the DeveloperFair Platform, DeveloperFair will suspend the affected Project and begin an investigation. DeveloperFair has absolute discretion to withhold funds from the Client and/or Developers and determine what funds should be released, if any, without any liability.
- 10.2 A Dispute may only be raised for current Work Periods, which are every two weeks. The Dispute must be raised 5 working days before any funds are due to be released to the Developer (see Section 9.2).
- 10.3 Depending on the circumstances, DeveloperFair will decide what funds (if any) should be released to the Developer and what should be returned to the Client. Both the Client and the Developer should provide any relevant details to the Dispute and any supporting documentation.
  - 10.3.1 Supporting documentation should be included with the Dispute filed by the Client.

- 10.3.2 The Developer will have an opportunity to provide supporting documentation.
- 10.4 DeveloperFair will investigate the merit of the Dispute, review any necessary documentation, internal records and any other documents deemed necessary. DeveloperFair may contact either party of the Dispute to gather more details and attempt to mediate the Dispute.
- 10.5 DeveloperFair aims to resolve any Disputes within five (5) working days in order that the Developer receive funds (if any) on time. In some cases, more complicated Disputes may take longer than five working days. In this event DeveloperFair will contact all parties to the Dispute and provide regular updates.

## **11. Confidentiality**

- 11.1 To the extent that a Client or Developer provides Confidential Information to the other and/or to DeveloperFair, the recipient shall protect the secrecy of the Confidential Information with the same degree of care as it uses to protect its own confidential information and shall not
- I. disclose Confidential Information to anyone, except, in the case of DeveloperFair, to any Client or Developer engaged in a project; and
  - II. use the Confidential Information, except as necessary for the performance of Work for the relevant project
- 11.2 Confidential Information must be destroyed or returned to the Client when it is no longer needed for performance of Work. The Client may also request any Confidential Information destroyed or returned at any stage during the Project by writing to the Developer. The Developer should comply as soon as is reasonably possible.
- 11.3 No User may reveal Confidential Information or proprietary information held about DeveloperFair to any party or 3<sup>rd</sup> party without the prior written consent from DeveloperFair.

## **12. Warranty**

- 12.1 NOTWITHSTANDING ANYTHING ELSE STATED ON THE DEVELOPERFAIR PLATFORM (INCLUDING WITHOUT LIMITATION ON THE SITE) OR BY ANY OF DEVELOPERFAIR'S REPRESENTATIVES, DEVELOPERFAIR MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, SAFETY, ACCURACY OR COMPLETENESS OF THE SERVICES, WORK PRODUCT, DEVELOPERFAIR PLATFORM, QUALITY OR CAPACITY OF THE CLIENT OR DEVELOPER, OR ANY ITEMS OR ACTIVITIES RELATING TO THIS AGREEMENT (COLLECTIVELY THE "**DISCLAIMED ITEMS**"). DEVELOPERFAIR DOES NOT REPRESENT OR WARRANT THAT

- I. THE USE OF THE DEVELOPERFAIR PLATFORM WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, APPLICATION, SYSTEM OR DATA,
- II. THE DISCLAIMED ITEMS WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS,
- III. ANY STORED DATA WILL BE ACCURATE OR RELIABLE,
- IV. THE QUALITY OF THE DISCLOSED ITEMS, AS WELL AS ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE DEVELOPERFAIR PLATFORM WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS,
- V. ERRORS OR DEFECTS IN THE DISCLAIMED ITEMS WILL BE CORRECTED, OR
- VI. THE DEVELOPERFAIR PLATFORM IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

12.2 THE DISCLAIMED ITEMS ARE PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY AND MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY DEVELOPERFAIR. DEVELOPERFAIR MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, SAFETY, TIMELINESS, QUALITY, SUITABILITY OR AVAILABILITY OF THE DISCLAIMED ITEMS, AS WELL AS ANY SERVICES, PRODUCTS OR GOODS OBTAINED BY THIRD PARTIES THROUGH THE USE OF THE DISCLAIMED ITEMS. YOU ACKNOWLEDGE AND AGREE THAT THE ENTIRE RISK ARISING OUT OF THE DISCLAIMED ITEMS REMAINS SOLELY WITH YOU, TO THE MAXIMUM EXTENT PERMITTED BY LAW.

12.3 DEVELOPERFAIR'S PLATFORM MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. DEVELOPERFAIR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES OF WHATSOEVER NATURE RESULTING FROM SUCH PROBLEMS.

### **13. Limitation of Liability**

13.1 IN NO EVENT SHALL DEVELOPERFAIR'S AGGREGATE LIABILITY EXCEED THE GREATER OF; ANY DEVELOPERFAIR FEES RETAINED BY DEVELOPERFAIR WITH RESPECT TO PROJECTS ON WHICH USER WAS INVOLVED AS THE CLIENT OR THE DEVELOPER DURING THE SIX (6) MONTH PERIOD PRECEDING THE DATE OF THE CLAIM.

13.2 IN NO EVENT SHALL DEVELOPERFAIR BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING PERSONAL INJURY, LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE). DEVELOPERFAIR SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY WHICH MAY BE INCURRED BY YOU,

INCLUDING BUT NOT LIMITED TO LOSS, DAMAGE OR INJURY ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE DISCLAIMED ITEMS, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE DEVELOPERFAIR PLATFORM OR AS TO THE QUALITY OR CAPACITY OF THE CLIENT OR DEVELOPER, ANY RELIANCE PLACED BY YOU ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY ADVERTISING, OR AS A RESULT OF ANY RELATIONSHIP OR TRANSACTION BETWEEN YOU AND ANY THIRD PARTY SERVICE PROVIDER, ADVERTISER OR SPONSOR WHOSE ADVERTISING APPEARS ON THE DEVELOPERFAIR PLATFORM OR IS REFERRED BY DEVELOPERFAIR OR THE DEVELOPERFAIR PLATFORM, EVEN IF DEVELOPERFAIR HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 13.3 RESPONSIBILITY FOR THE DECISIONS YOU MAKE REGARDING THE SERVICES AND WORK OFFERED VIA THE DEVELOPERFAIR PLATFORM RESTS SOLELY WITH YOU. WE WILL NOT ASSESS THE SUITABILITY, LEGALITY OR ABILITY OF ANY SUCH CLIENT OR DEVELOPER OR OTHER THIRD PARTIES AND YOU EXPRESSLY WAIVE AND RELEASE DEVELOPERFAIR FROM ANY AND ALL LIABILITY, CLAIMS, CAUSES OF ACTION, OR DAMAGES ARISING FROM YOUR USE OF THE DEVELOPERFAIR PLATFORM, OR IN ANY WAY RELATED TO THE CLIENT, THE DEVELOPER OR THIRD PARTIES INTRODUCED TO YOU BY THE DEVELOPERFAIR PLATFORM, OR WITH RESPECT TO THE PERFORMANCE OF ANY OBLIGATIONS WITH ANY CLIENT AND DEVELOPER, AS WELL AS ALL LOSSES RELATING THERETO.

#### **14. Indemnification**

- 14.1 You shall indemnify, defend and hold harmless DeveloperFair and its subsidiaries and affiliates, and each of their shareholders, directors officers, agents, employees, representatives and agents (each an "Indemnified Party", and collectively the "**Indemnified Parties**") from any and all claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) arising from or relating to any claim, judgment, or adjudication that any Work, Services or action or omission by such Client or Developer infringes Proprietary Rights or other rights of any third party.
- 14.2 Each Client shall indemnify, defend and hold harmless the Indemnified Parties from any and all claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) arising from or relating to:
- I. such Client's use of Services, including without limitation claims by or on behalf of any Developer for Worker's Compensation or unemployment benefits;
  - II. any Service Contract entered into between such Client and a Developer; or
  - III. any breach of their obligations set forth herein.
- 14.3 Each Developer shall indemnify, defend and hold harmless the Indemnified Parties from any and all claims, damages, liabilities, costs, and expenses (including, but not

limited to, reasonable attorneys' fees and all related costs and expenses) arising from or relating to:

- I. such Developer's provision of Services,
- II. any Service Contract entered into between such Developer and a Client; or (iii) any breach of their obligations set forth herein.

14.4 Any indemnity in favour of DeveloperFair, and any release of DeveloperFair, shall also be construed as being an indemnity or release, as the case may be, of the Indemnified Parties.

## **15. Term and Termination**

15.1 The term of this Agreement commences on the Effective Date and continues in effect until terminated in accordance with the terms of this Agreement.

15.2 Either party may terminate this Agreement at any time, with or without cause, effectively immediately upon written notice to the other party (or by DeveloperFair terminating or suspending User's account), provided, that any such termination for convenience shall not affect the validity of any Service Contracts that have been executed prior to termination and this Agreement shall continue to apply with respect to such Service Contracts.

15.3 Termination shall not absolve the Client of the requirement to pay for time spent and expenses incurred prior to the effective date of the termination.

15.4 All terms set forth herein which by their nature survive termination shall survive the termination of this Agreement.

## **16. General Provisions**

16.1 DeveloperFair has the right to suspend or cancel your access to the DeveloperFair Platform if it believes that you have violated or acted inconsistently with the letter or spirit of this Agreement or violated our rights or those of another party. Without limiting DeveloperFair's other remedies, we may suspend or terminate your account and refuse to provide any further access to the DeveloperFair Platform to you if:

- I. you breach any terms and conditions of this Agreement or other written policies and procedures posted on the Site;
- II. we are unable to verify or authenticate any information you provide to us; or
- III. we believe that your actions may cause legal liability for you, or any other Users or DeveloperFair.

16.2 In addition to Section 16.1, violations of this Agreement may be prosecuted to the fullest extent of the law and may result in additional penalties and sanctions.

16.3 You acknowledge that DeveloperFair is not providing any legal advice, and that you have been afforded an opportunity to obtain independent legal advice with respect to this Agreement and the Service Contracts, and that you understand the nature and the consequences of this Agreement and the Service Contract.

16.4 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of Ireland.

Any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of Ireland.

However, in the event of the actual or threatened infringement, misappropriation or violation of DeveloperFair's Proprietary Rights, DeveloperFair may, at its discretion, institute legal proceedings in any jurisdiction (s) which is (are) deemed necessary or advisable.

16.5 Clients and Developers may enter into any supplemental or other written agreement that they deem appropriate (e.g. confidentiality agreement) but which for greater certainty DeveloperFair will not be a party to. The terms and conditions of this Agreement, however, will govern and supersede any term or condition in a side agreement that purports to expand DeveloperFair's obligations or restrict DeveloperFair's rights under this Agreement.

16.6 Users shall not violate any laws or third party rights on or related to the DeveloperFair Platform. Without limiting the generality of the foregoing, Users agree to comply with all applicable import and export control laws and third parties' Proprietary Rights.

16.7 You consent to the use of:

- i. electronic means to complete this Agreement and to deliver any notices pursuant to this Agreement; and
- ii. electronic records to store information related to this Agreement or your use of the DeveloperFair Platform.

Notices hereunder shall be invalid unless made in writing and given:

- i. by DeveloperFair via email (in each case to the address that you provide),
- ii. a posting on the DeveloperFair Site or
- iii. by you via email to any such addresses as DeveloperFair may specify in writing. The date of receipt will be deemed the date on which such notice is transmitted.

16.8 No modification or amendment to this Agreement shall be binding upon DeveloperFair unless in a written instrument signed by a duly authorised representative of DeveloperFair. For the purposes of this Section, a written instrument shall expressly exclude electronic communications such as email and electronic notices but shall include facsimiles.

- 16.9 The failure or delay of either party to exercise or enforce any right or claim does not constitute a waiver of such right or claim and shall in no way affect that party's right to later enforce or exercise it, unless such party issues an express written waiver, signed by a duly authorized representative of each party.
- 16.10 Clients and Developers may not assign this Agreement, or any of its rights or obligations hereunder, without DeveloperFair's prior written consent in the form of a written instrument signed by a duly authorized representative of DeveloperFair (and, for the purposes of this Section, a written instrument shall expressly exclude electronic communications such as email and electronic notices but shall include facsimiles). DeveloperFair may freely assign this Agreement without consent of User. Any attempted assignment or transfer in violation of this Section will be null and void. Subject to the foregoing restrictions, this Agreement will inure to the benefit of the successors and permitted assigns of the parties.
- 16.11 If and to the extent any provision of this Agreement is held illegal, invalid, or unenforceable in whole or in part under applicable law, such provision or such portion thereof shall be ineffective as to the jurisdiction in which it is illegal, invalid, or unenforceable to the extent of its illegality, invalidity, or unenforceability, and shall be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the parties. The illegality, invalidity, or unenforceability of such provision in that jurisdiction shall not in any way affect the legality, validity, or enforceability of such provision in any other jurisdiction or of any other provision in any jurisdiction.
- 16.12 Neither Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the reasonable control of the Party in question.

## 17. Definitions

**"Client"** means an individual or entity using the DeveloperFair Platform to find and hire Developers to work on their Project.

**"Confidential Information"** means information which is disclosed by one party to another, pursuant to or in connection with this Agreement or otherwise (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked or may be interpreted as such). Confidential Information includes informational or materials that a Developer receives from a Client for a particular Project.

**"Developer"** means an individual software developer using the DeveloperFair Platform to offer software development services to Clients.

**“Effective Date”** is the date this Agreement is accepted by you and comes into effect.

**“Fees”** means the hourly rate paid to a Developer.

**“Policies”** refer to DeveloperFair Policies such as the Privacy Policy, which are accessible on the Site.

**“Project”** means a particular project a Client has requested the Developer to work on, as agreed on the DeveloperFair Platform.

**“Proprietary Rights”** means any and all rights, title, ownership, and interest in and to copyrights, mask works, industrial designs, trademarks, service marks, trade names, trade secrets, patents, and any other rights to intellectual property, recognised in any jurisdiction, whether or not perfected.

**“Services”** means software development services performed by a Developer.

**“Work”** means any tangible or intangible results or deliverables that Developer agrees to produce for Client in relation to a particular Project.

**“Work Period”** means the billing period in which Developer is paid for.