

DevFund

[This document shall be valid without signature for all project submissions on DevFund's website(s)]

NON-DISCLOSURE AGREEMENT

("NDA")

Between:

- (1) **DevFund**, having its registered office at Lagos, **Nigeria** ("**DevFund**"), and
- (2) **Prospective Client**.

DevFund and **Prospective Client** individually referred to as "**Party**" and collectively the "**Parties**" -

BACKGROUND

(A) **DevFund** and **Prospective Client** plan to enter into further discussions regarding the provision of IT Development and Technology Services (the "**Services**") by **DevFund** for **Prospective Client**.

(B) The Parties wish to exchange information in order to further explore the possibilities of co-operation with regard to the Services.

IT IS AGREED as follows:

1. CONFIDENTIAL INFORMATION

1.1 **Confidential Information** in this NDA means

(a) any information relating to

(i) the Services and/or

(ii) either Party or its Affiliates as subsequently defined in section 1.3

which is made available in writing, visual or machine readable form or orally to either Party, its Affiliates or its advisers (hereinafter referred to as the **Receiving Party**) by the other Party, its Affiliates or its advisers (hereinafter referred to as the **Disclosing Party**) and includes any notes, findings, summaries, technical specifications, transcripts, results and reports, whether preliminary or final, analyses, memoranda or other documents derived from, containing or reflecting such information; and

(b) the fact that discussions, reviews, examinations, evaluations and negotiations about the Services are being held.

1.2 However, Confidential Information excludes information which

- (i) is already in the public domain or becomes available to the public through no fault of the Receiving Party; or
- (ii) was lawfully in the possession of the Receiving Party prior to receipt from the Dis-closing Party; or
- (iii) following disclosure by the Disclosing Party, becomes available to the Receiving Party from a source other than the Disclosing Party, which source is not bound by any obligation of confidentiality in relation to such information; or
- (iv) is subsequently independently developed by the Receiving Party as demonstrated by the Receiving Party's written records.

For the avoidance of doubt, the Receiving Party has the burden of proof that any of the exceptions referred to in section 1.2 (i) through (iv) applies.

1.3 **Affiliate** in this NDA means affiliated companies.

2. **CONFIDENTIALITY OBLIGATIONS**

2.1 The Receiving Party shall hold in strict confidence all Confidential Information, and not disclose Confidential Information to any third party. In addition, the Receiving Party must not use Confidential Information for any purpose other than the evaluation, development, preparation and execution of the Services. The Receiving Party also undertakes to restrict access to Confidential Information to a limited number of its employees and advisors on a need-to-know basis, and the Receiving Party shall ensure and procure that this NDA is observed by all its employees and advisors to whom Confidential Information is fully or partly made available.

2.2 The Receiving Party undertakes at its expense without undue delay upon request from the Disclosing Party

(a) at the Disclosing Party's choice, to either return or destroy all Confidential Information (whether received by the Receiving Party or its advisers), including the original versions as well as any type of copy, and in the case of a destruction to notify the Disclosing Party in writing of the destruction without undue delay, and

(b) to delete any data in connection with Confidential Information which was saved by the Receiving Party or its advisers electronically or in another way or which was transmitted to a third party for saving and to notify the Disclosing Party in writing without undue delay of the deletion of such data,

provided that the Receiving Party may retain any Confidential Information if and to the extent required by law and that the Receiving Party's advisers may keep one copy of any document in their possession for record purposes without prejudice to any duties of confidentiality in relation to such Confidential Information.

- 2.3 For the avoidance of doubt, the Disclosing Party is entitled to request the return, destruction or deletion of its Confidential Information according to section 2.2 at any time and at its sole discretion.
- 2.4 If the Receiving Party is required to disclose Confidential Information by law or any other official regulations or pursuant to any stock exchange regulations, the Receiving Party is, to the extent provided therein, permitted to disclose the Confidential Information to the authorised persons, in which case the Receiving Party shall, to the extent it is lawful and practical to do so, notify the Disclosing Party of the disclosure prior to the disclosure as early as possible.
- 2.5 Even in such instances as described in section 1.2 (i) through (iv), the Receiving Party shall not disclose the correlation existing between information acquired or derived from another source and the Confidential Information acquired or derived from the Disclosing Party.
- 2.6 The Receiving Part is only entitled to any set-off and retention rights vis-à-vis claims of the Disclosing Party under this agreement if its counter-claims are undisputed or have been confirmed with final and unappealable effect.
- 2.7 Each Party shall ensure and procure that its Affiliates comply with the provisions of this section 2.
- 2.8 For each intentional or negligent breach of the obligations pursuant to this section 2 the Receiving Party shall pay to the Disclosing Party a contractual penalty in the amount of EUR 10,000 (in words: ten thousand Euros). In case of ongoing breaches, each period of 45 (forty-five) days during which the breach continues shall be considered as one separate breach. For the avoidance of doubt, the intentional or negligent disclosure of Confidential Information by the Receiving Party to a third party shall constitute a breach of the obligations pursuant to this section 2 by the Receiving Party, but not an on-going breach by the Receiving Party within the meaning of the foregoing sentence, unless the third party uses the Confidential Information for a period of more than 45 (forty-five) days. The Disclosing Party's right to claim further damage shall remain unaffected. The Receiving Party has the burden of proof that it neither intentionally nor negligently breached the obligations pursuant to this section 2.

3. **OWNERSHIP AND RIGHT OF USE OF CONFIDENTIAL INFORMATION**

The Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party, its Affiliates or its advisers any rights over the Confidential Information whatsoever beyond those expressly set forth in this NDA. In particular, any rights of use of the Receiving Party and/or any intellectual property rights of the Receiving Party with regard to Confidential Information provided to the Receiving Party, its Affiliates or its advisers shall be excluded.

4. **ACCURACY OF INFORMATION**

The Parties agree that neither Party and neither of its Affiliates shall be responsible for the accuracy, reliability or completeness of any information in connection with the Services, in particular Confidential Information which is provided to the respective other Party, and that in this respect no guarantees or warranties are or will be given, unless the Parties agree in writing and explicitly something else. Neither Party is under an obligation to update or correct any inaccuracies in any information which may be provided to the respective other Party.

5. **NON-SOLICITATION**

Neither Party nor any of its Affiliates shall, for a period of 12 (twelve) months as of the commencement of the term of this NDA, actively solicit or entice away or endeavor to actively solicit or entice away any person who during such period is employed by the other Party or any of its Affiliates in a managerial capacity and who the Party comes into contact with, or receives Confidential Information about, in relation to the Services, save that these provisions shall not restrict the employment of any person by a Party as a result of that person responding independently to a published general recruitment advertisement not specifically directed to such person or to other general recruiting measures initiated by a Party.

6. **TERM**

6.1 This NDA shall become effective upon accepting to proceed on the DevFund Website and shall be effective until

- (a) it is terminated by mutual written agreement of the Parties or
- (b) the 3rd (third) anniversary of its coming into force.

6.2 Confidential Information disclosed during the term of this NDA (as defined in section 6.1) shall remain protected pursuant to section 2 of this NDA for a period of 3 (three) years as of disclosure. All obligations under section 2 of this NDA shall expire 3 (three) years after termination of this NDA pursuant to section 6.1 at the latest. The Disclosing Party's rights pursuant to section 2.2 (re-turn/destruction/deletion of Confidential Information) shall however remain in force for an unlimited period.

7. **GOVERNING LAW AND SETTLEMENT OF DISPUTES**

7.1 This NDA shall be governed by and construed in accordance with the laws of the Federal Republic of Nigeria.

7.2 Any dispute, controversy or claim arising out of or in connection with this NDA or any subsequent amendments to this NDA, including, without limitation, any dispute regarding the validity, binding effect, interpretation, performance, breach or termination of this NDA, as well as non-contractual claims, shall be exclusively referred to and settled by the ordinary courts of the Federal Republic of Nigeria.

8. MISCELLANEOUS

- 8.1 This Agreement is also made for the benefit of each Party's *Affiliates*. Each Affiliate may assert all rights and enforce all provisions under this Agreement in so far as the Confidential Information relates to it. The Parties' own rights under this Agreement shall remain unaffected hereby.
- 8.2 This Agreement is legally independent from the envisaged Services and from other legal transactions in connection with the Services which may possibly require a specific legal form.
- 8.3 Any amendment, supplement, modification or change to this NDA, including a change to this section 8.3, shall be in writing and signed by each Party. No other act, document, usage or custom shall be deemed to amend or modify this NDA.
- 8.4 Should one or more provisions of this NDA be or become invalid, this shall not affect the validity of the remaining provisions of this NDA, which shall remain in full force and effect. In lieu of the invalid provision such valid provision shall be deemed to be in force and effect which comes as close as legally possible to what the Parties intended from an economic perspective with the invalid provision. The same shall apply to any omission in this NDA.

[This NDA shall become valid upon accepting to proceed on project submission on our website(s)]