

TUNGA USER AGREEMENT

Welcome to Tunga User Agreement. Tunga is an online platform that connects African software programmers to tech businesses and software projects from all over the world.

This User Agreement contains the terms & conditions that apply to the usage of Tunga Website, Staff Augmentation Services and/or Consulting Services (together the Services). Using Tunga Website and/or Services is only allowed after agreeing with these terms & conditions. Thus Tunga User Agreement is a lawful agreement between you and Tunga covering all aspects of the Services. Any applicability of terms & conditions of the Customer is denied.

Tunga may modify this User Agreement during the relation between Tunga and the User. The changed version of this User Agreement will be applicable from the moment the (changed) User Agreement is published on the Website. In case of substantial changes, customers will be notified by email about the change. If a Customer does not accept the changed terms of use, he/she has to notify Tunga in writing within one week after publication of the changed terms of use.

This User Agreement has been last updated in September 2022.

DEFINITIONS

In this User Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

Confidential Information

Shall include, but not necessarily be limited to, all information which is not publicly known including the business, finances, technology (including without limitation the Source Software, the Software and the Documentation) trade secrets, and any other commercially sensitive information of either party regardless of its nature.

Consulting Services

All services specifically requested by the Customer including scoping activities consisting of a detailed analysis of Customer demand and developer availability in order to create a complete team with all required skills for the full Customer demand.

Customer (also referred to as 'you')

Customer that engages Tunga Developers through the Tunga platform and/or orders separate Services.

Intellectual Property Rights

All copyrights and other intellectual property rights, howsoever arising and in whatever media, whether or not registered, including (without limitation) patents, trademarks, service marks, trade names, registered design and any applications for the protection or registration of these rights and all renewals and extensions thereof throughout the world.

Managed Teams

A combination of dedicated developers and a team leader, all working under the control and management of the Customer and provided through the Tunga platform.

Proposal

Document in which Tunga outlines the terms and scope of the specific Services to be provided and/or the (team of) dedicated developer(s) that will be provided.

Price

The fixed, all-inclusive price for the provision of the Services and the Rates as detailed in the Proposal.

Rates

The hourly and daily fees that apply to the allocation of Tunga Developers.

Service Contract

A formal agreement between Customer and Tunga that includes

- 1) this User Agreement,
- 2) the specific terms of the Services as agreed in the Proposal,
- 3) our [Code of Conduct](#) and
- 4) any additional agreement between Customer and Tunga that is uploaded to the Website and that is not conflicting with any of the terms laid out in this User Agreement.

Services	The Staff augmentation, and Consulting Service provided by Tunga to the Customer as agreed upon in a Service Contract.
Software	The software to which contributions are made by a developer provided by Tunga.
Staff Augmentation Services	Services consisting of providing access to the Tunga platform in order to match staff demand of the customer and IT-developers including Managed Teams and making the capacities of the developers available to the Customer team.
Tunga	Tunga BV, registered at Wibautstraat 131-D, 1091 GL Amsterdam, The Netherlands (Chamber of Commerce nr: 67015679).
Tunga Developers	IT developers in the Tunga-database.
Website	The website operated by Tunga, which is hosted at https://tunga.io , and all the services, tools and applications offered there.

Article 1. USING THE TUNGA WEBSITE & SERVICES

- 1.1 You cannot use the Services if you are
 - a. legally not allowed to enter into contracts by the laws governing your country of residence,
 - b. under the age of 16
 - c. have been suspended as a Customer by Tunga.
- 1.2 The Customer is obliged to provide Tunga only with valid, accurate and true information into it's Tunga Account or otherwise.
- 1.3 If you act on behalf of a legally registered company, you declare to have all necessary power of attorney to solicit Services from Tunga on behalf of this legally registered company.
- 1.4 The Customer is responsible for maintaining the secrecy of his/her account information, including username and password. In the event of misuse or suspected misuse of his/her account, the Customer must immediately notify Tunga.

- 1.5 The Customer is not entitled to perform any actions that would interfere with the proper working of the Website and the Services.

Article 2. ENGAGING TUNGA DEVELOPERS

- 2.1 The agreement to engage Tunga Developers shall be dependent on the acceptance of a Proposal issued by Tunga.
- 2.2 All Tunga Developers that is provided by Tunga through the Tunga-Website either as individuals or as Managed Teams shall work under the management and instruction of Customer but no employer-employee relationship will be created between Customer and Tunga Developers.

Article 3. OBLIGATIONS OF TUNGA

- 3.1 Tunga will perform the obligations described in the Proposal.
- 3.2 Tunga shall ensure that all Tunga Developers engaged by the customer to perform certain development activities have the necessary skills, expertise and diligence to undertake such work and will conform to the professional standards generally observed in the computer industry for similar services.
- 3.3 Tunga shall ensure that all Tunga Developers engaged by the Customer shall comply with the provisions in this User Agreement relating to Confidential Information.

Article 4. OBLIGATIONS OF THE CUSTOMER

- 4.1 Customer agrees to assume the following responsibilities when it engages Tunga Developers as far as reasonably relevant:.
- a. *Onboarding* the developer(s) to the development team, including but not limited to:
 - (i) Establish clear rules of engagement and communicate these to the developer(s);
 - (ii) Grant access to all relevant tools and information (source code, designs, issue management tool, hour tracking tool etc.)
 - (iii) Ensuring that the developer can work in a secure environment for example by providing a VPN connection to enable the developer to work on the Customer's systems (developers work on their own devices outside the Tunga system).
 - (iv) Taking organizational measures in the relation with the developer to optimize security and confidentiality.
 - b. All *project management* related to the development team, including but not limited to:
 - (i) Hour registration, estimation and project planning
 - (ii) Prioritizing of work and distribution of tasks
 - (iii) Monitoring progress

- (iv) Requirements analysis
 - (v) Management of all resources including the team leaders in case of a managed team.
 - (vi) Establish *clear quality guidelines* for the developer(s) on the development team.
- c. Provide direction for the execution of tasks to the developer(s) (a clear direction of architecture, product components to be implemented, specific software tools and libraries to use, Definition of Done, Coding Guidelines etc)
 - (i) Testing all delivered software within 5 working days of delivery by the developer(s);
 - (ii) Providing timely and regular feedback to both the developer(s) and Tunga:
 - (iii) Provide weekly feedback on the performance of the developer to the developer(s)
 - (iv) Report missed hours by the developer to Tunga within 5 working days
 - (v) Report performance issues of the developer to Tunga within 3 working days
 - (vi) Report incorrect invoices to Tunga within 10 working days
- 4.2 Once the timelines mentioned above under C) have expired, this will be regarded as acceptance of the delivery of services by Tunga
- 4.3 Customer ensures that its representative is available as reasonably required by Tunga.
- 4.4 Tunga shall not be deemed in breach of this User Agreement or the Services in the event Tunga's failure to meet its responsibilities and time schedules is caused by Customer's failure to meet (or delay in) its responsibilities obligations and time schedules set forth in this article and the Proposal.

Article 5. EXECUTION OF THE SERVICES

- 5.1 Each party shall nominate in writing upon the signing of this User Agreement, the person who will act as its representative for the purposes of this User Agreement and who will be responsible for providing any information which may be required by the other party to perform its obligations under this User Agreement.
- 5.2 The parties shall determine in the Proposal how often their respective representatives will (virtually) meet during the term of this User Agreement.
- 5.3 Tunga may perform any or all of its obligations under this User Agreement through agents or subcontractors, provided that Tunga shall remain liable for such performance and shall indemnify the Customer against any loss or damage suffered by the Customer arising from any act or omission of such agents or subcontractors.

Article 6. TERM & TERMINATION

- 6.1 This User Agreement shall enter into force once the Customer has created an account and will be entered into for an indefinite period.

- 6.2 This User Agreement cannot be terminated as long as a Service Contract is in place on the basis of which Services are (still to be) provided.
- 6.3 In case no Service Contract is in place either party can terminate this User Agreement using a 6 months notice period.
- 6.4 Either party shall be entitled to terminate this User Agreement forthwith at any time by written notice to the other party if:
- a. the other party commits a breach of any of the terms of this User Agreement and (if the breach is capable of remedy) fails to remedy the breach within 30 days after receipt of notice in writing to do so; or
 - b. the other party becomes subject to an administration order; a receiver or administrative receiver or similar is appointed over, or an encumbrancer takes possession of any of the other party's property or assets; the other party enters into an arrangement or composition with its creditors, ceases or threatens to cease to carry on business, becomes insolvent, or ceases to be able to pay its debts as they fall due.
- 6.5 Forthwith upon the termination of this User Agreement, Tunga shall return to the Customer the Software, all related materials and documentation and any Confidential Information belonging to the Customer and all copies of the whole or any part thereof or, if requested by the Customer, shall destroy the same and certify in writing to the Customer that it has been destroyed.
- 6.6 Any termination of this User Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 6.7 Upon termination Customer shall pay Tunga for all Services rendered and work performed up to the effective date of termination for any reason subject to Customer's rights to only pay fair value if Customer terminates for cause.

Article 7. PRICE & PAYMENT TERMS

- 7.1 In consideration of the performance of the Services, the Customer shall pay to Tunga the Price which shall be invoiced to the Customer in the specified proportions set out in the Proposal. If any additional Services are requested Rates mentioned in the Proposal shall apply.
- 7.2 The Customer shall pay to Tunga the amounts invoiced by Tunga to the Customer based on the Rates.
- 7.3 The Customer shall also pay or procure the payment to Tunga of all reasonable travelling and other out-of-pocket expenses incurred by Tunga Developers and Tunga employees as long as they were pre-approved by the Customer.
- 7.4 Payment of sums due by the Customer to Tunga shall be made within the time and other conditions set out in the Proposal.
- 7.5 With effect from the beginning of each calendar year, Tunga may increase the Rates in effect during the previous year provided that not less than 10 working days prior written notice has been given to the Customer by Tunga.

- 7.6 All amounts under this User Agreement and/or a Proposal are exclusive of VAT, which shall be payable by the Customer at the rate and in the same manner for the time being prescribed by law against submission of a valid tax invoice.

Article 8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Intellectual Property Rights in all works to be provided by Tunga Developers (including the source and object code) together with any related materials or documentation shall belong to the Customer upon payment of the Price in full.
- 8.2 Tunga shall notify the Customer immediately if Tunga becomes aware of any unauthorised use of the whole or any part of the works by any person.

Article 9. CONFIDENTIALITY

- 9.1 Both during this User Agreement and after its termination, the parties shall treat as strictly confidential (and shall procure that its personnel and subcontractors and each of them treat as confidential) and shall not (and shall procure that their personnel and subcontractors and each of them does not) other than in the proper provision of the services required to fulfil the task, use or disclose to any person, firm or company, any Confidential Information belonging to the other party or its clients, suppliers or customers, nor permit its use or disclosure. In particular, both parties shall maintain any source code provided by the other party under maximum security conditions. Both parties shall take adequate security measures according to professional standards to protect Confidential Information disclosed by the other party on their systems. Both parties shall actively inform the other party when they believe that Confidential Information has been compromised.
- 9.2 The provisions of clause 9.1 shall not apply where Confidential Information is divulged to:
- a. either party's own employees and then only to those employees who need to know the same;
 - b. either party's auditors, tax authorities, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right, duty or obligation to know the business of the other party and then only in pursuance of such right, duty or obligation.
- 9.3 Both parties undertake to ensure that persons and bodies referred to in clause 9.2 are made aware before the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the other party.
- 9.4 Each party to this User Agreement shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Confidential Information and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person for breach of confidence.
- 9.5 The provisions of this clause shall survive the termination of this User Agreement but the restrictions contained in clause 9.1 shall cease to apply to any information which may come into the public domain otherwise than through unauthorised disclosure.

Article 10. EXCLUSIVITY & NON-CIRCUMVENTION

- 10.1 In consideration of the payments made by Customer to Tunga herein, Tunga agrees not to develop, design, code, test or document a competing product for its own use.
- 10.2 Tunga hereby covenants and agrees that it has no rights to market, distribute, sell or license any of the applications or deliverables being developed by Tunga Developers for Customer.
- 10.3 Neither party will solicit, hire, contract with, or engage the employment of services for any of the other party's staff, work force or sub-contractors (including Tunga Developers) for a period of one (1) year following termination of this User Agreement.
- 10.4 Parties may agree to neglect clause 10.3 on a case by case basis, provided that they can agree on a remuneration fee as compensation.
- 10.5 Parties acknowledge that breach of clause 10.3 makes them liable for injunctive relief and for a penalty of EUR 20,000,- per breach notwithstanding the right for each party to obtain full compensation of damages suffered.
- 10.6 Clause 10.3 applies to the Customer as a legal entity and also to any other company, partnership, employee relationship, contracted relationship or similar that the Customer or one of its employees and subcontractors enter into.

Article 11. WARRANTIES

- 11.1 Tunga warrants that the selection of Tunga Developers takes place in a professional manner and in conformity with generally prevailing industry standards.
- 11.2 This warranty is exclusive and is in lieu of all other warranties, whether express or implied, including any warranties of merchantability or fitness for a particular purpose and any oral or written representations, proposals or statements made on or prior to the effective date of this agreement.

Article 12. LIABILITY

- 12.1 Tunga's maximum liability to the Customer under this User Agreement or otherwise for any cause whatsoever (whether in the form of the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to a sum equivalent to the price paid to Tunga for the Services that are the subject of the Customer's claim, plus damages limited to 25% of the same amount for any additional costs directly, reasonably and necessarily incurred by the Customer in obtaining alternative products and/or services with a total maximum of EUR 25.000,-.
- 12.2 The parties acknowledge and agree that the limitations contained in this clause 12 are reasonable in the light of all the circumstances.
- 12.3 In no event will Tunga be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of Tunga whether such damages were reasonably foreseeable or actually foreseen.

- 12.4 The Customer's statutory rights as a consumer (if any) are not affected. All liability that is not expressly assumed in this User Agreement is excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort including negligence or any other form of action. For the purposes of this clause, Tunga includes its employees, subcontractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above.
- 12.5 Nothing in this User Agreement shall exclude or limit liability for fraudulent misrepresentation.

Article 13. ARBITRATION & MEDIATION

- 13.1 The laws of the Netherlands are applicable if any disputes arise concerning this User Agreement.
- 13.2 All disputes arising from this User Agreement shall be judged by the competent court having jurisdiction in the district or sub-district where Tunga has its registered office, with the explicit exclusion of every other court.

Article 14. FORCE MAJEURE

- 14.1 Notwithstanding anything else contained in this User Agreement, neither party shall be liable for any delay in performing its obligations under this User Agreement if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of the other party) provided however that any delay by a subcontractor or supplier of the party so delaying shall not relieve the party from liability for delay except where such delay is beyond the reasonable control of the subcontractor or supplier concerned. Subject to the party so delaying promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay), the performance of such party's obligations shall be suspended during the period that the said circumstances persist and such party shall be granted an extension of time for performance equal to the period of the delay. Save where such delay is caused by the act or omission of the other party (in which event the rights, remedies and liabilities of the parties shall be those conferred and imposed by the other terms of this User Agreement and by law):
- a. any costs arising from such delay shall be borne by the party incurring the same;
 - b. either party may, if such delay continues for more than 10 weeks, terminate this User Agreement forthwith giving notice in writing to the other by reason of such termination save that the Customer shall pay Tunga a reasonable sum in respect of any work carried out by it prior to such termination and for that purpose the Customer may deduct such sum from any amounts previously paid by the Customer under this User Agreement (the balance (if any) of which shall be refunded to the Customer whether paid by way of deposit or otherwise).

Article 15. NOTICES

- 15.1 Notices shall be deemed to have been duly given:
- a. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

- b. when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or
- c. on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- d. on the tenth business day following mailing, if mailed by airmail, postage prepaid, in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

Article 16. OTHER PROVISIONS

- 16.1 Parties are themselves solely responsible for complying with the obligations following from this User Agreement, including with obligations relating to any applicable local or international laws and regulations.
- 16.2 In the case of conflict or ambiguity between any provision contained in the body of this User Agreement and any provision contained in any Schedule, the provision in the body of this User Agreement shall take precedence.
- 16.3 No party shall issue or make any public announcement or disclose any information regarding this User Agreement unless prior written consent has been obtained from the other party.
- 16.4 This User Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this User Agreement. However the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect insofar as there is no conflict between the same. The parties confirm that they have not entered into this User Agreement on the basis of any representation that is not expressly incorporated into this User Agreement.
- 16.5 If any provision of this User Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this User Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this User Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this User Agreement.
- 16.6 This agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in this User Agreement shall include its successors and permitted assignees.
- 16.7 In this User Agreement references to a party include references to a person:
 - a. who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under this User Agreement (or any interest in those rights); or
 - b. who, as administrator, liquidator or otherwise, is entitled to exercise those rights, and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party. For this purpose, references to a party's rights under this User Agreement include any similar rights to which another person becomes entitled as a result of a novation of this User Agreement.

Article 17. OTHER PROVISIONS

- 17.1 Tunga is never liable for claims as a result of outages or unavailability of the server. Tunga has the objective for hundred percent (100%) server up-time, but cannot guarantee this.
- 17.2 Tunga reserves the right to perform maintenance or changes to Tunga Account, the Services and/or Website. This may result in periods during which Tunga Account, the Services and/or Website may be temporarily unavailable. Tunga will announce such interruptions in advance, if possible. Tunga is never liable for claims as a result of unavailability of Tunga Account, the Services or the Website.
- 17.3 Tunga is committed to the high standard of data security and precision. However, Tunga is never liable for any loss or damages that a Customer may incur as a result of malfunctions, errors, security breaches or any other reason.
- 17.4 Tunga is never liable for the content used by a Customer on the Tunga Website. If a Customer comes across content that is not correct, offensive or in violations with these terms of use, the Customer has to report this immediately to Tunga. Tunga has the right to delete content of Customers, if necessary.
- 17.5 The content on the Website, including, without limitation, the text, software, scripts, graphics, photographs, sounds, videos, articles and the trademarks, service marks and logos contained therein are owned by or licensed by Tunga, subject to intellectual property rights, unless otherwise explicitly indicated by Tunga.
- 17.6 All legal notices should be sent via e-mail to admin@tunga.com. Also, if you have any questions about this User Agreement or if you wish to report breaches of this User Agreement, please contact us by e-mail us to this e-mail address.