

## **Developer Tools Terms of Use**

Please read these Developer Tools Terms of Use (the “Terms”) carefully, as they govern your (the “User,” “You, or “Your”) use of the software development kits, command-line interfaces, and application programming interfaces, including any accompanying user documentation and materials made available by Near (“Near,” the “Owner,” “us,” “we,” or “our”) to develop applications on the Near protocol (the “Near Protocol”) (such tools and interfaces, the “Developer Tools”) in a legally binding way. Capitalized words are defined in the relevant dedicated section of this document.

Nothing in these Terms creates any relationship of employment, agency, or partnership between the involved parties.

The Developer Tools are provided by:

**Near.Inc**

**Owner contact email:** [legal@near.org](mailto:legal@near.org)

BY CREATING A DEVELOPER ACCOUNT OR ACCESSING OR USING THE DEVELOPER TOOLS, YOU, AS THE INDIVIDUAL USER REGISTERING FOR THE DEVELOPER TOOLS ON BEHALF OF AN ORGANIZATION OR COMPANY: (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THESE TERMS; (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THESE TERMS AND HAVE LEGAL AUTHORITY TO BIND THAT ORGANIZATION OR COMPANY TO THESE TERMS; AND (C) ACCEPT THESE TERMS ON BEHALF OF YOUR ORGANIZATION OR COMPANY AND AGREE THAT THE ORGANIZATION OR COMPANY IS LEGALLY BOUND BY THESE TERMS. “YOU” HEREIN REFERS TO THAT ORGANIZATION OR COMPANY.

IF YOU DO NOT AGREE TO THESE TERMS, NEITHER YOU NOR ANY INDIVIDUAL ON BEHALF OF ORGANIZATION OR COMPANY MAY ACCESS OR USE THE DEVELOPER TOOLS.

### **Developer Account Creation**

In order to access the Developer Tools, you will need to create a developer account. It’s important that you provide us with accurate, complete and current account information and keep this information up to date. If you don’t, we might have to suspend or terminate your developer account. To protect your developer account, keep the account details and password confidential, and notify us right away of any unauthorized use. You’re responsible for all activities that occur under your developer account.

## **License Grant and Intellectual Property.**

Subject to your compliance with the terms and conditions of these Terms, Near grants you a limited, nonexclusive, revocable, non-sublicensable and non-transferable right to download, install, and use the Developer Tools solely for the purposes of developing applications on the Near Protocol (the “License”).

You acknowledge that Near and its licensors own all worldwide right, title and interest in and to the Developer Tools including all intellectual property rights therein. Near reserves all rights in and to the Developer Tools not expressly granted to you in these Terms. Users of the Developer Tools have no proprietary interest in any software, system, source code, run code or other intellectual property of Near.

Certain portions of the Developer Tools are available under open source software licenses (the “Open Source Developer Tools”). In such circumstances, your use of the Open Source Developer Tools are governed by the open source license applicable to such Open Source Developer Tools, and not the License set forth herein.

## **Third Party Materials**

The Developer Tools may contain external resources provided by third parties, including without limitation third party open source components (“Third Party Materials”). Users acknowledge and accept that the Owner has no control over such resources and is therefore not responsible for such Third Party Materials.

Conditions applicable to any Third Party Materials, including those applicable to any third party open source components within the Developer Tools, result from each such third parties’ terms and conditions or, in the absence of those, applicable statutory law.

## **Acceptable use and Restrictions**

The Developer Tools may only be used within the scope of what they are provided for, under these Terms (or, in the case of Open Source Developer Tools, the applicable open source license) and applicable law. Users are solely responsible for making sure that their use of this Developer Tools violates no applicable law, regulations or third-party rights.

Except as expressly authorized under these Terms (or, in the case of the Open Source Developer Tools, the applicable open source license), you may not: (a) copy, modify, display, distribute, transfer or sublicense the Developer Tools or otherwise make the functionality of the Developer Tools available to any third party through any means; (b) interfere with, bypass or disable any features or functionality that are embedded in or included with the Developer Tools; (c) access or use the Developer Tools for the purpose of monitoring the availability, performance, or functionality of the Developer Tools or for any other benchmarking or competitive purpose; (d) access or use the Developer Tools in any unlawful manner, for any unlawful purpose or in any manner inconsistent with these Terms; or (e) use any scraping, data harvesting, web crawlers, or

other data extraction methods to extract data from the Developer Tools. You acknowledge and agree that certain aspects of the Developer Tools constitute or contain trade secrets of Near and its licensors. Accordingly, you will not disassemble, decompile or reverse engineer the Developer Tools or permit or authorize a third party to do so.

Owner further reserves the right to take any appropriate measure to protect its legitimate interests including by denying Users access to the Developer Tools, terminating contracts, reporting any misconduct performed through the Developer Tools to the competent authorities – such as judicial or administrative authorities - whenever Users engage or are suspected to engage in any of the following activities:

- violate laws, regulations and/or these Terms (or, in the case of Open Source Developer Tools, the applicable open source license);
- infringe any third-party rights;
- considerably impair the Owner’s legitimate interests; or
- offend the Owner or any third party.

### **Liability and indemnification**

#### **EU Users**

##### ***Indemnification***

The User agrees to indemnify and hold the Owner and its subsidiaries, affiliates, officers, directors, agents, co-branders, partners and employees harmless from and against any claim or demand — including but not limited to lawyer's fees and costs — made by any third party due to or in relation with any culpable use of or connection to the use of the Developer Tools, violation of these Terms, infringement of any third-party rights or statutory provision by the User or its affiliates, officers, directors, agents, co-branders, partners and employees to the extent allowed by applicable law.

##### ***Limitation of liability***

Unless otherwise explicitly stated and without prejudice to applicable statutory product liability provisions, Users shall have no right to claim damages against the Owner (or any natural or legal person acting on its behalf).

This does not apply to damages to life, health or physical integrity, damages resulting from the breach of an essential contractual obligation such as any obligation strictly necessary to achieve the purpose of the contract, and/or damages resulting from intent or gross negligence, as long as the Developer Tools has been appropriately and correctly used by the User.

Unless damages have been caused by way of intent or gross negligence, or they affect life, health or physical integrity, the Owner shall only be liable to the extent of typical and foreseeable damages at the moment the contract was entered into.

## **Australian Users**

### ***Limitation of liability***

Nothing in these Terms excludes, restricts or modifies any guarantee, condition, warranty, right or remedy which the User may have under the Competition and Consumer Act 2010 (Cth) or any similar State and Territory legislation and which cannot be excluded, restricted or modified (non-excludable right). To the fullest extent permitted by law, our liability to the User, including liability for a breach of a non-excludable right and liability which is not otherwise excluded under these Terms of Use, is limited, at the Owner's sole discretion, to the re-performance of the services or the payment of the cost of having the services supplied again.

## **US Users**

### ***Disclaimer of Warranties***

The Developer Tools are provided strictly on an "as is" and "as available" basis. Use of the Developer Tools is at Users' own risk. To the maximum extent permitted by applicable law, the Owner expressly disclaims all conditions, representations, and warranties — whether express, implied, statutory or otherwise, including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third-party rights. No advice or information, whether oral or written, obtained by User from Owner or through the Developer Tools will create any warranty not expressly stated herein.

Without limiting the foregoing, the Owner, its subsidiaries, affiliates, licensors, officers, directors, agents, co-branders, partners, suppliers and employees do not warrant that the content is accurate, reliable or correct; that the Developer Tools will meet Users' requirements and will be suitable for the User's use or circumstances; that the Developer Tools will be error-free; that any data or information that may be obtained from the use of the Developer Tools will be accurate or reliable; that any defects or errors will be corrected; or that the Developer Tools are free of viruses or other harmful components.

The Developer Tools may become inaccessible or may not function properly with Users' operating system. The owner cannot be held liable for any perceived or actual damages arising from operation or use of this Developer Tools.

Federal law, some states, and other jurisdictions, do not allow the exclusion and limitations of certain implied warranties. The above exclusions may not apply to Users. This Agreement gives Users specific legal rights, and Users may also have other rights which vary from state to state. The disclaimers and exclusions under this agreement shall not apply to the extent prohibited by applicable law.

### ***Limitations of liability***

To the maximum extent permitted by applicable law, in no event shall the Owner, and its subsidiaries, affiliates, officers, directors, agents, co-branders, partners, suppliers and employees be liable for:

- any indirect, punitive, incidental, special, consequential or exemplary damages, including without limitation damages for loss of profits, goodwill, use, data or other intangible losses, arising out of or relating to your access to or use of, or inability to use, the Developer Tools, whether based on warranty, contract, tort (including negligence) or any other legal theory;
- any damage, loss or injury resulting from hacking, tampering or other unauthorized access or use of the Developer Tools or User account or the information contained therein;
- personal injury or property damage, of any nature whatsoever, resulting from User access to or use of the Developer Tools;
- any bugs, viruses, trojan horses, or the like that may be transmitted to or through the Developer Tools; and/or
- any errors, omissions, or any loss or damage incurred as a result of the use of the Developer Tools.

In no event shall the Owner, and its subsidiaries, affiliates, officers, directors, agents, co-branders, partners, suppliers and employees be liable for any claims, proceedings, liabilities, obligations, damages, losses or costs in an amount exceeding the amount paid by User to the Owner hereunder in the preceding 12 months, or the period of duration of this agreement between the Owner and User, whichever is shorter.

This limitation of liability section shall apply to the fullest extent permitted by law in the applicable jurisdiction whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis, even if the company has been advised of the possibility of such damage.

TO THE MAXIMUM EXTENT PERMITTED BY THE LAW OF THE APPLICABLE JURISDICTION, IN NO EVENT WILL NEAR'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE DEVELOPER TOOLS EXCEED ONE HUNDRED DOLLARS (\$100).

Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, therefore the above limitations or exclusions may not apply to User. The terms give User specific legal rights, and User may also have other rights which vary from jurisdiction to jurisdiction. The disclaimers, exclusions, and limitations of liability under the terms shall not apply to the extent prohibited by applicable law.

## ***Indemnification***

The User agrees to defend, indemnify and hold the Owner and its subsidiaries, affiliates, officers, directors, agents, co-branders, partners, suppliers employees, licensees and licensors harmless from and against any and all claims or demands, damages, obligations, losses, liabilities, costs or debt, and expenses, including, but not limited to, legal fees and expenses, along with any claims made by a third-party, guest, invitee or otherwise relating to your use of your developer account, resulting from or arising out of

- User's use of and access to the Developer Tools by you or any person using your credentials;
- User's development, distribution or dissemination of its applications, including any claim that any of such applications infringes, misappropriates or otherwise violates any intellectual property or other proprietary rights of a third party;
- Any acts or omissions of the User's customers, including with respect to any use of the Developer Tools or applications developed on the Near Protocol;
- User's violation of these Terms, including, but not limited to, User's breach of any of the representations and warranties set forth in these Terms;
- User's violation of any third-party rights, including, but not limited to, any right of privacy or intellectual property rights;
- User's violation of any statutory law, rule, or regulation;
- User's willful misconduct; or
- statutory provision by User or its affiliates, officers, directors, agents, co-branders, partners, suppliers and employees to the extent allowed by applicable law.

## **Common provisions**

### **No Waiver**

The Owner's failure to assert any right or provision under these Terms shall not constitute a waiver of any such right or provision. No waiver shall be considered a further or continuing waiver of such term or any other term.

### **Privacy policy**

To learn more about the use of their Personal Data, Users may refer to Near's Privacy Policy, available online at: <https://console.pagoda.co/PrivacyPolicy.pdf>.

## **Intellectual property rights**

Without prejudice to any more specific provision of these Terms (and subject to any applicable open source license governing the Open Source Developer Tools), any intellectual property rights, such as copyrights, trademark rights, patent rights and design rights related to this the Developer Tools are the exclusive property of the Owner or its licensors and are subject to the protection granted by applicable laws or international treaties relating to intellectual property.

All trademarks — nominal or figurative — and all other marks, trade names, service marks, word marks, illustrations, images, or logos appearing in connection with the Developer Tools are, and remain, the exclusive property of the Owner or its licensors and are subject to the protection granted by applicable laws or international treaties related to intellectual property.

## **Changes to these Terms and the Developer Tools**

The Owner reserves the right to amend or otherwise modify these Terms at any time. In such cases, the Owner will appropriately inform the User of these changes.

Such changes will only affect the relationship with the User for the future.

The continued use of the Developer Tools will signify the User's acceptance of the revised Terms. If Users do not wish to be bound by the changes, they must stop using the Developer Tools. Failure to accept the revised Terms, may entitle either party to terminate the Agreement.

The applicable previous version will govern the relationship prior to the User's acceptance. The User can obtain any previous version from the Owner.

If required by applicable law, the Owner will specify the date by which the modified Terms will enter into force.

In addition, Near reserves the right to modify the Developer Tools, release subsequent versions of the Developer Tools, or discontinue the Developer Tools in its sole discretion. You are responsible, at your expense, for making any changes to your applications on the Near Protocol that are required as a result of Near's updates and revisions to the Developer Tools. Near will attempt to provide thirty (30) days' advance notice of any updates or revisions to the Developer Tools that are not backward compatible or significantly change its functionality by posting such notice on Near's website at [near.org](http://near.org), provided that notice is not required to effect any such updates or revisions to the Developer Tools. Near has no obligation to provide you or any users of your applications on the Near Protocol with support, software upgrades, enhancements or modifications to the Developer Tools. You understand and agree that you are solely responsible for providing user support and any other technical assistance for your applications on the Near Protocol. Near may redirect users and potential users of your Apps to you for purposes of answering general inquiries and support questions.

## **Assignment of contract**

The Owner reserves the right to transfer, assign, dispose of by novation, or subcontract any or all rights or obligations under these Terms, taking the User's legitimate interests into account. Provisions regarding changes of these Terms will apply accordingly.

Users may not assign or transfer their rights or obligations under these Terms in any way, without the written permission of the Owner.

## **Contacts**

All communications relating to the use of the Developer Tools must be sent using the contact information stated in this document.

## **Additional Terms Specific to US Users**

### ***Entire Agreement***

Any such invalid or unenforceable provision will be interpreted, construed and reformed to the extent reasonably required to render it valid, enforceable and consistent with its original intent. These Terms constitute the entire agreement between Users and the Owner with respect to the subject matter hereof, and supersede all other communications, including but not limited to all prior agreements, between the parties with respect to such subject matter. These Terms will be enforced to the fullest extent permitted by law.

### ***Governing law and Dispute Resolution***

***Governing Law.*** These Terms and any action related thereto will be governed by the Federal Arbitration Act, federal arbitration law, and the laws of the State of California, without regard to its conflict of laws provisions. Except as otherwise expressly set forth in Section "Dispute Resolution," the exclusive jurisdiction for all Disputes (defined below) that you and Near are not required to arbitrate will be the state and federal courts located in the San Francisco County, California, and you and Near each waive any objection to jurisdiction and venue in such courts.

***Mandatory Arbitration of Disputes.*** We each agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services (collectively, "Disputes") will be resolved solely by binding, individual arbitration and not in a class, representative or consolidated action or proceeding. You and Near agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of these Terms, and that you and Near are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of these Terms.

***Exceptions.*** As limited exceptions to Section "Mandatory Arbitration of Disputes" above: (i) we both may seek to resolve a Dispute in small claims court if it qualifies; and (ii) we each



retain the right to seek injunctive or other equitable relief from a court to prevent (or enjoin) the infringement or misappropriation of our intellectual property rights.

Conducting Arbitration and Arbitration Rules. The arbitration will be conducted by the American Arbitration Association (“AAA”) under its Consumer Arbitration Rules (the “AAA Rules”) then in effect, except as modified by these Terms. The AAA Rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. A party who wishes to start arbitration must submit a written Demand for Arbitration to AAA and give notice to the other party as specified in the AAA Rules. The AAA provides a form Demand for Arbitration at [www.adr.org](http://www.adr.org).

Any arbitration hearings will take place in the county (or parish) where you live, unless we both agree to a different location. The parties agree that the arbitrator shall have exclusive authority to decide all issues relating to the interpretation, applicability, enforceability and scope of this arbitration agreement.

Arbitration Costs. Payment of all filing, administration and arbitrator fees will be governed by the AAA Rules, and we won’t seek to recover the administration and arbitrator fees we are responsible for paying, unless the arbitrator finds your Dispute frivolous. If we prevail in arbitration we’ll pay all of our attorneys’ fees and costs and won’t seek to recover them from you. If you prevail in arbitration you will be entitled to an award of attorneys’ fees and expenses to the extent provided under applicable law.

Injunctive and Declaratory Relief. Except as provided in Section “Exceptions” above, the arbitrator shall determine all issues of liability on the merits of any claim asserted by either party and may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual claim. To the extent that you or we prevail on a claim and seek public injunctive relief (that is, injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the public), the entitlement to and extent of such relief must be litigated in a civil court of competent jurisdiction and not in arbitration. The parties agree that litigation of any issues of public injunctive relief shall be stayed pending the outcome of the merits of any individual claims in arbitration.

Class Action Waiver. **YOU AND NEAR AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, if the parties’ Dispute is resolved through arbitration, the arbitrator may not consolidate another person’s claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this Dispute Resolution section shall be null and void.

Severability. With the exception of any of the provisions in Section “Class Action Waiver” of these Terms, if an arbitrator or court of competent jurisdiction decides that any part of these Terms is invalid or unenforceable, the other parts of these Terms will still apply.

## **Additional Terms Specific to EU Users**

### **Severability**

Should any provision of these Terms be or be deemed void, invalid or unenforceable, the parties shall do their best to find, in an amicable way, an agreement on valid and enforceable provisions thereby substituting the void, invalid or unenforceable parts.

In case of failure to do so, the void, invalid or unenforceable provisions shall be replaced by the applicable statutory provisions, if so permitted or stated under the applicable law.

Without prejudice to the above, the nullity, invalidity or the impossibility to enforce a particular provision of these Terms shall not nullify the entire Agreement, unless the severed provisions are essential to the Agreement, or of such importance that the parties would not have entered into the contract if they had known that the provision would not be valid, or in cases where the remaining provisions would translate into an unacceptable hardship on any of the parties.

### **Governing law**

These Terms are governed by the law of the place where the Owner is based, as disclosed in the relevant section of this document, without regard to conflict of laws principles.

However, regardless of the above, if the User qualifies as a European Consumer and has their habitual residence in a country where the law provides for a higher consumer protection standard, such higher standards shall prevail.

### **Venue of jurisdiction**

The exclusive competence to decide on any controversy resulting from or connected to these Terms lies with the courts of the place where the Owner is based, as displayed in the relevant section of this document.

The above does not apply to any Users that qualify as European Consumers, nor to Consumers based in Switzerland, Norway or Iceland.