

Terms of Service – Instep EAP Ltd as Buyer

Instep EAP Ltd

Agreement

1. THE DOCUMENTS FORMING THE CONTRACT BETWEEN US ARE:

- a. These Terms of Service
- b. Any Statement(s) of Work or Service Schedule(s) entered into under these Terms of Service
- c. Any annexures to any Statement(s) of Work or Service Schedule(s)
- d. Any variations we agree to any Statement(s) of Work or Service Schedule(s)

Together, the 'Contract'.

- 1.1. These Terms of Service set out the general terms and conditions that apply when Instep EAP Limited ("Instep") is buying services from you. It outlines what you can expect from us, what we expect from you, and everything you must agree to before your services can be provided.
- 1.2. These Terms of Service may be amended by Instep from time to time. Any Statement(s) of Work or Service Schedule(s) that are in force at the time will be deemed to be operational under the amended terms.
- 1.3. A separate Statement of Work or Service Schedule will be agreed for the specific Services you provide. In the event of any inconsistencies between these Terms of Service and any Statement of Work or Service Schedule, the terms of the Statement of Work or Service Schedule will prevail over the Terms of Service.

2. STATUTORY PROVISIONS

- 2.1 In any document forming the Contract a reference to any enactment that is in force in New Zealand includes any enactment which amends, consolidates, supplements, or replaces it, and includes a reference to any regulation, rule, ordinance, or by-law made under that enactment.
- 2.2 Where services are supplied by you to Instep in a jurisdiction other than New Zealand, the relevant local statutory provisions will apply.

3. SERVICES

- 3.1 **Appointment:** Instep appoints you to provide the Services, and you accept such appointment, on the terms and conditions set out in the Contract.
- 3.2 **Non-Exclusive:** You acknowledge that you are not appointed as the exclusive provider of services to Instep and that Instep may engage any other person to carry out or provide the same or similar services to or on behalf of Instep.
- 3.3 **Review:** Any Statement of Work or Service Schedule entered into under these Terms of Service will be reviewed annually from the date of signing, or as required, to re-assess the fees, scope, requirements, and time frame for the deliverables in that Statement of Work or Service Schedule.

4. SERVICE LEVELS

4.1 Mutual Obligations: We both agree to:

- (a) act in good faith and honestly in our dealings with each other;
- (b) discuss matters affecting the Contract or the delivery of the Services, whenever necessary; and
- (c) notify each other immediately of any actual or anticipated issues that could significantly impact on the Services.

4.2 In supplying Services to Instep, you agree to:

- (a) Exercise reasonable skill and care including the use of a sufficient number of appropriately experienced, qualified, competent, training and efficient personnel where required, and always act in an ethical and professional manner, and in accordance with applicable legislation, regulations and generally accepted practice within your profession or area of expertise;
- (b) Complete each of the Service(s) and Deliverables under the Statement of Work or Service Schedule in the agreed timeframes;
- (c) at your own cost, make good any errors, omissions, defects, or faults in the Services which Instep notifies you of, and carry out and complete any remedial work to Instep's satisfaction no later than 7 Business days after receiving notification from Instep;
- (d) not bind or commit Instep to any agreement, arrangement, or transaction; and
- (e) not make any public comment about Instep without Instep's prior written consent.
- (f) maintain appropriate insurance for the Service supplied under any Statement of Work or Service Schedule entered into under these terms, and provide to Instep a current certificate of insurance cover on request.
- (g) comply with any Instep's policies and procedures that are relevant to the Services you are providing.

4.3 Skills agrees to:

- (a) provide any information in its possession that you request and that is necessary to enable you fulfil its obligations under the Contract; and
- (b) make decisions and give approvals reasonably required by the supplier to enable delivery of the Services, within reasonable timeframes.

4.4 Health and Safety: You shall:

- (a) comply, and ensure that all individuals engaged by you in relation to any Statement(s) of Work or Service Schedule(s) comply with your obligations under the Health and Safety at Work Act 2015, and any other government regulations or health orders;
- (b) participate, and ensure that all individuals engaged by you in relation to the Contract or the delivery of Services participate, in a health and safety induction if required by Instep; and
- (c) without limiting your obligations under clause 4.4(a), report to Instep any accidents, injuries, or near miss accidents or injuries which occur in the course of you providing the Services.

5. PAYMENT

- 5.1 **Fees:** The Fees and Expenses payable for the Services under the Contract are set out in the Statement of Work or Service Schedule.
- 5.2 **Administration Costs:** Unless provided for in the Statement of Work or Service Schedule, and agreed in writing in advance, there is no fee payable for routine administration and preparation time for the delivery of the Services.
- 5.3 **Invoicing:** you will send Instep an invoice for the amounts payable under the Contract which must:
- (a) be emailed in a PDF format to the relevant email specified in the Statement of Work;
 - (b) include a purchase order number (if you not have been supplied with one you will need to request one from your Instep Contractor Manager);
 - (c) be in the form of a valid tax invoice for GST purposes. All fees are GST exclusive. GST will be paid if you are GST registered;
 - (d) specify the Services and/or Deliverables to which the applicable Fees relate;
 - (e) be dated no later than 3 months after the Services and/or Deliverables have been delivered; and
 - (f) be typed or computer printed / readable (handwritten invoices are not acceptable); and
 - (g) include any receipts for Expenses which Instep has agreed to under the Statement of Work or Service Schedule.
- 5.4 **Payment:** If your invoice meets the above criteria, Instep will make payment of the invoice to your nominated bank account in the timeframes specified in the Statement of Work.
- 5.5 **Disputed Invoices:** If Instep genuinely disputes any portion of any amount appearing as payable on any invoice issued by you under the Contract:
- (a) Instep will notify you of such dispute at the earliest reasonable opportunity;
 - (b) the undisputed portion of that invoice will remain payable on the due date for payment under the applicable Statement of Work or Service Schedule, and
 - (c) Instep will not be obliged to pay the disputed portion of that invoice until the dispute has been resolved by agreement between us or, in the absence of such agreement, in accordance with clause 13.

6. COMMUNICATION AND REPORTING

Communication and reporting requirements will depend on the services being purchased and will be specified in the relevant Statement of Work or Service Schedule.

7. INDEPENDENT CONTRACTOR

Nothing in the Contract creates a relationship between you and Instep of employer/employee, principal/agent, a joint venture, or a partnership.

- 7.1 Instep will determine how much work you are allocated and how often, and may allocate no work.
- 7.2 You may not assign or sub-contract your obligations under this Agreement to any third party except with the prior written consent of Instep. You are responsible to ensure any approved sub-contractor holds general liability and professional indemnity insurance. Instep may assign or sub-contract its obligations under this Agreement to any third party.

- 7.3 You will provide your own resources that are necessary to deliver the Services under any Statement of Work or Service Schedule. Resources may include but are not limited to laptop, phone, vehicle, and adequate internet connection.
- 7.4 You are responsible during the Term for:
- (a) **Taxes:** payment of any tax (including GST) for any payments you receive under the Contract;
 - (b) **Levies:** payment of levies required under the Accident Compensation Act 2001 and its amendments;
 - (c) **Registration:** GST registration;
 - (d) **Fines:** payment and fines for failure to comply with any statute or regulation;
 - (e) **Withholding Tax:** (not applicable if you are a Limited Liability Company). If you are an individual, Instep may be required to deduct withholding tax as a contractor. Requirements will be specified in the relevant Service Schedule.

8. CONFIDENTIALITY

Each party agrees that it will not, either during the Term or after the termination or expiry of the Contract disclose to any person, use for its own purposes, or use to the detriment of the other party any Confidential Information which it obtains during or incidental to the performance of Services, except:

- 8.1 as required by law;
- 8.2 with the other party's prior written consent; or
- 8.3 to the extent reasonably required by the Contract (and, without limiting the effect of this clause, you may disclose Confidential Information only to your officers, employees, or professional advisers, on a "need to know" basis, as is reasonably required for the implementation of the Contract and only after each such person has signed a written undertaking, in favour of Instep, to maintain confidentiality in respect of that Confidential Information, to the same extent as is required of you).

9. NO CONFLICT OF INTEREST

- 9.1 You warrant that, at the time of entry into a Statement of Work or Service Schedule under these terms of Service, you have no Conflict of Interest in providing the Services.
- 9.2 During the Term, each party will each do its best to avoid situations that may lead to a Conflict of Interest arising.
- 9.3 Each party shall notify the other of any potential or actual Conflict of Interest immediately upon becoming aware of it.

10. PRIVACY

Any personal information obtained in performing the Services may only be collected, held, used, and distributed by either party for the purpose of delivering the Services and in accordance with the Privacy Act 2020, and any replacement legislation and any similar or equivalent requirements in the relevant jurisdiction.

11. INTELLECTUAL PROPERTY

- 11.1 **Existing Intellectual Property:** You are the owner of any of your existing Intellectual Property, and Instep is the owner or licensee of any of Instep's existing Intellectual Property.
- 11.2 **New Intellectual Property:** The ownership rights of any Intellectual Property developed in connection with the Contract shall belong to Instep. You agree that you do not have and will not otherwise acquire any rights in or to any Intellectual Property which is owned by Instep.
- 11.3 **Warranties:** You warrant that the Services you provide under the Contract will not infringe any

Intellectual Property Rights belonging to any third party.

11.4 **Instep's Licence:** Instep grants you a non-exclusive, non-transferrable, non-sublicensable, sub-licence to use Instep's Intellectual Property for the sole purpose of you performing your obligations under the Contract.

11.5 **Contractor Licence:**

- (a) Where Instep is using your Intellectual Property, you grant us a non-exclusive, royalty-free, perpetual, and irrevocable licence to use your Intellectual Property which is required to carry out the Services under the Contract;
- (b) Instep agrees that it will not modify or adapt any of your Intellectual Property in any respect without your consent (other than updating your Intellectual Property to Instep's brand standards); and
- (c) You warrant that you have all the rights and authority necessary to grant the licence in this clause and that, by granting this licence to Instep, you do not infringe the intellectual property rights of any third party. You must obtain (at your cost) the grant of any licences from third parties to give effect to the licence you grant Instep.

12. NON-SOLICITATION

During the term of the Contract, and for twelve (12) months thereafter, you and/or your sub-contractors or assignees will not solicit any engagement that directly competes with Services offered by Instep with clients that you come into contact with as a result of providing Services under any Statement of Work or Service Schedule.

13. DISPUTE RESOLUTION

- 13.1 If direct negotiations between us fail to resolve any disputes arising out of the provisions of the Contract, that dispute must first be referred to mediation.
- 13.2 We will mediate the dispute in accordance with the standard mediation agreement of the Resolution Institute, and the Chair of Resolution Institute (or the Chair's nominee) will select the mediator and determine the mediator's fee.
- 13.3 If we do not resolve the dispute in the first seven (7) working days of mediation, then that dispute is to be referred to arbitration and shall be finally settled in accordance with the Arbitration Act 1996 and all amendments to that Act.
- 13.4 Pending resolution of any dispute, we will continue to perform our obligations under the Contract without prejudice to our respective rights and remedies.
- 13.5 Each party will bear its own costs of resolving any disputes.

14. INDEMNITY

If Instep incurs any loss, damage, costs, or claims, including any claims by third parties for infringement of third party rights, as a result of your breach of these Terms of Service, then you agree to indemnify Instep to the full extent of any direct loss for any such breach.

15. LIABILITY

- 15.1 **Exclusions:** A party (First Party) will not be liable to the other party (Second Party) under or in connection with the Contract (whether in contract, tort or otherwise) in respect of any:
 - (a) indirect, consequential, or special loss suffered or incurred by the Second Party as a direct or indirect result of a breach by the First Party of any of its obligations under the Contract;

- (b) loss of profit, revenue, opportunity, or goodwill, in each case whether direct, indirect, or consequential; or
 - (c) loss suffered or incurred by the Second Party, to the extent to which this results from any act or omission by the Second Party.
- 15.2 Limitation on Liability: Subject to Clause 15.3, the maximum aggregate liability of either party to the other party under or in connection with the Contract (whether in contract, tort or otherwise) is limited to the total Fees paid and/or payable by Instep to you under the Contract.
- 15.3 No Exclusion or Limit: The exclusions and limitations of liability recorded in clauses 15.1 and 15.2 will not apply to:
- (a) deliberate breach or misconduct or gross negligence;
 - (b) any liability under clause 8 (Confidentiality), 10 (Privacy) or 11 (Intellectual Property);
 - (c) any fraudulent, intentionally tortious, or unlawful acts or omissions of wilful misconduct;
 - (d) any repudiation of the Contract; or
 - (e) any injury to, or death of, any person or damage to any of the other party's property caused by negligence or wilful default.

16. TERMINATION

- 16.1 Termination for convenience: Instep may end this Contract by giving you a minimum of 30 Business Days' notice in writing.
- 16.2 Termination by Instep: Instep may terminate the Contract immediately, or on such date as determined by Instep, by written notice, if
- (a) in the opinion of Instep, you have brought Instep, or any individuals employed by or associated with Instep, into disrepute;
 - (b) there is a material adverse change in Skills' financial condition, operations, or operational ability;
 - (c) you become bankrupt or insolvent or have an administrator, receiver, liquidator, statutory manager, mortgagee's agent appointed or become subject to any form of external administration;
 - (d) you have a Conflict of Interest that in Instep's opinion is sufficiently material as to impact adversely on the delivery of the Services.
- 16.3 Termination for breach: If a party breaches this Contract (defaulting party), the non-defaulting party may give a default notice to the defaulting party.
- 16.4 A default notice must state:
- (a) the nature of the breach, and
 - (b) the time and date by which it must be remedied.
- 16.5 The period allowed to remedy the breach must be reasonable given the nature of the breach.
- 16.6 The non-defaulting party may terminate the Contract immediately by giving a further notice to the defaulting party if the defaulting party does not remedy the breach as required by the default Notice.
- 16.7 If the Contract is terminated:
- (a) the termination will be without prejudice to either parties' rights and obligations in respect of matters which occurred before the ending or expiry of the Contract;
 - (b) Instep will pay you any applicable approved unpaid Fees and Expenses for the Services delivered up to the date of termination;
 - (c) you shall refund to Instep any fees paid to Instep that relate to the period after termination of the Contract;
 - (d) Each party will both stop using and return to one another the other's property, Intellectual Property and Confidential Information; and
 - (e) termination of the Contract will not affect any provisions of the Contract which are intended to continue after termination, including clause 8, 10, 11 and 12 of these Terms of Service, together with any such other clauses as are required to give effect to those provisions.

17. WARRANTIES

17.1 **Reciprocal Warranties:** Both parties warrant to the other:

- (a) It has the full power and capacity to execute, deliver, and perform its obligations under the Contract;
- (b) It is not aware of any fact or circumstance which would, or might reasonably be expected to, prevent it from performing its obligations under the Contract, at the times and in the manner contemplated by the Contract; and
- (c) all information disclosed for the purposes of the Contract is, or will be when disclosed, complete and accurate in all material respects.

17.2 **Supplier's Warranties:** You warrant to Instep that:

- a) You will perform the Services with the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of activity, under the same or similar circumstances;
- b) the Deliverables you provide will meet the applicable specifications and requirements set out in the Statement of Work or Service Schedule;
- c) You have all necessary rights and authority to supply the Deliverables to Skills under the Contract; and
- d) without limiting Clause 11, the Services and the Deliverables and anything else provided by you to Instep under the Contract will not infringe the Intellectual Property rights of any third party.

18. DATA PROTECTION AND SECURITY

Where the nature of your engagement with Instep under a Statement of Work or Service Schedule requires you to have access to personal or commercial information from Instep ("Data") you agree to:

- 18.1 have systems and processes to ensure that Data is protected from loss, unauthorised access, misuse, modification, or corruption;
- 18.2 ensure your staff and contractors comply with your systems and processes for protection of Data;
- 18.3 meet your obligations under the Privacy Act 2020 in respect of protection of personal information;
- 18.4 meet your obligations under these Terms of Service and any Statement of Work or Service Schedule in respect of protection of other Data;
- 18.5 report to Instep any breaches of Data security or near misses by you or your staff or contractors relating to Data from Instep to which you have access;
- 18.6 hold Data from Instep in compliance with all relevant laws and regulations; and
- 18.7 ensure any Data required from third parties is obtained fairly and lawfully and with all necessary consents.

19. FORCE MAJEURE

- 19.1 **Force Majeure:** Neither you nor Instep will be liable for any act, omission, or failure to fulfil an obligation under the Contract if this arises as a result of a Force Majeure event.
- 19.2 **Notification:** If a party cannot fulfil its obligations due to a Force Majeure event that party shall immediately notify the other in writing of the reasons for its failure to fulfil its obligations, and of the effect of such failure. The party asserting a Force Majeure event shall also use all responsible endeavours to avoid or remove the cause of the failure and perform its obligations under the Contract.
- 19.3 **Termination:** If a Force Majeure event continues for 30 Business days, either party may terminate the Contract immediately on written notice to the other.

20. GENERAL TERMS

- 20.1 **Governing Law:** The laws of New Zealand shall apply to the Contract.
- 20.2 **Complete Agreement:** These Terms of Service and any associated Statement of Work or Service Schedule replace all previous written or oral agreements or understandings between the parties about the subject matter of the Contract.
- 20.3 **Costs:** Except as otherwise stated in the Contract, each Party shall bear its own costs and expenses in relation to the negotiation, preparation, execution, and implementation of the Contract and any subsequent agreements or contractual arrangements entered into relating to the Contract.
- 20.4 **Survival:** Clauses 8, 10, 11, and 12 will survive the Contract and any subsequent agreement and will continue to bind the parties.
- 20.5 **Variation:** The Contract and any subsequent agreement may only be varied by agreement in writing between the parties.
- 20.6 **Non-waiver:** No waiver of any breach of the Contract or any provision contained in the Contract shall be deemed to be a waiver of any preceding or succeeding breach of the Contract or any other provision contained in the Contract. No extension of time for performance of any duty or obligation shall be deemed to be an extension of time for performance of any other duty or obligation.
- 20.7 **Human Rights and Modern Slavery:** In performing your obligations under this Contract, you must:
- a) Comply with all applicable modern slavery laws, statutes, regulations and codes from time to time in force, and
 - b) Take reasonable steps to ensure that there is no modern slavery or human trafficking in Your or Your subcontractors' supply chains or business operations

21. DEFINITIONS

In the Contract, unless the context otherwise indicates:

Business Day means a day except a Saturday or a Sunday or a statutory public holiday in the country where the services are delivered;

Confidential Information means all information or data, in any form or medium whatsoever, relating to us and/or you which by its nature, or by the circumstances of its disclosure, is, or could reasonably be expected to be, regarded as confidential.

Conflict of Interest means if a party or its staff's personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under the Contract. It means that its independence, objectivity, or impartiality can be called into question. A Conflict of Interest may be:

- (a) where the conflict currently exists;
- (b) where the conflict is about to happen or could happen; or
- (c) where other people may reasonably think that a person is compromised.

Contract means these Terms of Service and any Statement of Work or Service Schedule for the purchase of particular services.

Deliverables mean the Services delivered as stated in the Statement of Work or Service Schedule;

Expenses mean any actual and reasonable agreed out-of-pocket costs incurred by you in the delivery of the Services as set out in the Statement of Work or Service Schedule;

Fees mean the total amount stated in the Statement of Work or Service Schedule payable by Instep to you, excluding any Expenses;

Force Majeure includes acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, governmental action after the date of the Contract, fire, communication line failures, power failures, earthquakes, or other disasters;

GST, where used in a Statement of Work or Service Schedule, means goods and services tax levied under the Goods and Services Tax Act 1985, and any similar value added or sales tax imposed in the relevant jurisdiction, at the rate prevailing from time to time, including any tax levied in substitution for such tax, but excluding any penalties or interest payable in respect of such tax;

Intellectual Property means trademarks, rights in domain names, copyright, patents, registered designs, circuit layouts, rights in computer software, databases and lists, rights in inventions, confidential information, knowhow and trade secrets, operating manuals, quality manuals and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing), and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world, including the goodwill associated with the foregoing and all rights of action, powers and benefits in respect of the same;

Services means the services as described in the Statement of Work or Service Schedule;

Statement of Work or Service Schedule means the document setting out the Services to be supplied or purchased under these Terms from time to time;

Tax where used, means any relevant taxes that apply to transactions under any Statement of Work or Service Schedule.

Term has the meaning given in any applicable Statement of Work or Service Schedule.