

# Terms of Service – Instep EAP Ltd as a Supplier

**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 which incorporate 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 Ltd ("Instep") is supplying services to you. It outlines what you can expect from Instep, what Instep expects 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 we 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 Instep to you in a jurisdiction other than New Zealand the statutory provisions in that jurisdiction will apply.

---

## 3. SERVICES

---

- 3.1 Appointment: You appoint Instep to provide the Services, and Instep accepts such appointment, on the terms and conditions set out in the Contract.
- 3.2 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 you,** Instep agrees to:
- (a) exercise reasonable skill and care including the use of a sufficient number of appropriately experienced, qualified, competent, and trained personnel as required, and always to act in an ethical and professional manner;
  - (b) complete each of the Service(s) and the Deliverable(s) under the Statement of Work or Service Schedule in the agreed time frame(s);
  - (c) at its own cost, make good any errors, omissions, defects, or faults in the Services which you notify Instep of, and to carry out and complete any remedial work within a reasonable time period of receiving notification from you;
  - (d) maintain appropriate insurance for the Service(s) provided under any Statement of Work or Service Schedule which form part of the Contract.
- 4.3 You agree to:
- (a) provide all information in your possession that is necessary to enable Instep to fulfil its obligations under the Contract; and
  - (b) make decisions and give approvals reasonably required by Instep to enable delivery of the Services, within reasonable timeframes.
- 4.4 **Health and Safety:** Both parties agree to meet all their respective obligations under applicable health and safety legislation.

---

## 5. PAYMENT

---

- 5.1 **Fees:** The Fees and Expenses payable for the Services 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 **Payment Terms:** Instep will invoice you at the end of each month for services provided during that month. Invoices will be generated on or before the 5th day of the following month. All invoices are payable by the 20th of the month of invoice.
- 5.4 **Disputed Invoices:** If you dispute any any amount appearing as payable on any invoice issued by Instep under the Contract:
- (a) You will notify Instep of such dispute within 14 days of receipt of the invoice;
  - (b) the undisputed portion of that invoice will remain payable on the due date for payment, and
  - (c) You 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. CANCELLATION AND AMENDMENT

---

Where the Services provided under any Statement of Work include delivery to an in-house group that is exclusive to You the following terms will apply if you cancel or change a scheduled workshop:

- 6.1 If at least fifteen (15) days' notice of cancellation is given, no direct charges will be made, but any third-party costs that have been incurred will be on-charged to you at cost.
- 6.2 If fewer than fifteen (15) days' notice of cancellation is given, a charge of 50% of the workshop Fee will be made, and any third-party costs that have been incurred will be on-charged to you at cost.
- 6.3 Changes to the workshop attendees may be made at no charge at any time before a workshop starts. Substitutions are not permitted after commencement.
- 6.4 Changes to the workshop date(s) made on fewer than 10 days' notice before the nominated start date will incur a charge of 20% of the workshop Fee.

---

## 7. COMMUNICATION AND REPORTING

---

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

---

## 8. CONFIDENTIALITY

---

We each agree that we will not, either during the Term or after the termination or expiry of the Contract, disclose to any person, use for our own purposes, or use to the detriment of the other party any Confidential Information which we obtain during or incidental to the performance of Services, except as follows:

- 8.1 As required by law;
- 8.2 With the other party's prior written consent; or
- 8.3 On a need to know basis to the extent reasonably required by the Contract (and, without limiting the effect of this clause, we may disclose Confidential Information only to our officers, employees, or professional advisers, on a need to know basis, as is reasonably required for the implementation of the Contract)

---

## 9. NO CONFLICT OF INTEREST

---

- 9.1 **Best Efforts:** During the Term, we will each do our best to avoid situations that may lead to a Conflict of Interest arising.
- 9.2 **Notification:** Each of us must notify the other of any 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 in accordance with the Privacy Act 2020 (or any replacement legislation) or in accordance with 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 will 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:** Instep warrants that the Services, or any part of them, we provide under the Contract will not infringe any Intellectual Property Rights belonging to any third party.

---

## 12. NON-SOLICITATION

---

During the term of the Contract, and for twelve (12) months thereafter, you will not solicit any Instep employees or contractors to deliver services that directly compete with the Services offered by Instep.

---

## 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.

---

## 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, then you agree to indemnify Instep to the full extent of any direct or indirect 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 of Liability:** Subject to Clause 15.3, the maximum aggregate liability of Instep to you under or in connection with the Contract (whether in contract, tort or otherwise) is limited to the total fees paid or payable to Instep 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) your obligation to pay the Fees and any Expenses in accordance with the Contract;
  - (b) deliberate breach or misconduct or gross negligence;
  - (c) any liability under clauses 8 (Confidentiality), 10 (Privacy) or 11 (Intellectual Property);
  - (d) any fraudulent, intentionally tortious, or unlawful acts or omissions of wilful misconduct;
  - (e) any repudiation of the Contract; or
  - (f) 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 Either party may terminate the Contract immediately, or on such date as agreed, by written notice, if:
- (a) both parties agree to the termination;
  - (b) there is a materially adverse change in Instep's financial condition, operations, or operational ability to meet its obligations under the Contract;
  - (c) either party becomes bankrupt or insolvent or has an administrator, receiver, liquidator, statutory manager or mortgagee's agent appointed or otherwise become subject to any form of external administration; or
  - (d) you have a Conflict of Interest that in Instep's opinion is so material as to impact adversely on the delivery of the Services.
- 16.2 Termination for breach: If a party breaches this Contract (defaulting party), the non-defaulting party may give a default notice to the defaulting party.
- 16.3 A default notice must state:
- (a) the nature of the breach, and
  - (b) the time and date by which it must be remedied.
- 16.4 The period allowed to remedy the breach must be reasonable given the nature of the breach.
- 16.5 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.
- 16.6 Consequences of Termination: If the Contract is terminated the termination will be without prejudice to either party's rights and obligations in respect of matters which occurred before termination, and;
- (a) you will pay Instep all outstanding Fees and Expenses for the Services delivered up to the date of termination;
  - (b) Both parties will both stop using, and shall return, each other's Intellectual Property and Confidential Information; and
  - (c) termination of the Contract will not affect any provisions of the Contract which are intended to continue after termination, including clause 8, 10, 11, 12 and 15 of these Terms of Service, together with such other clauses as are required to give effect to those provisions.

---

## 17. WARRANTIES

---

- 17.1 Reciprocal Warranties: Each party warrants to the other that:
- (a) it has 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 by it for the purposes of the Contract is, or will be when disclosed, complete and accurate in all material respects.

---

## 18. DATA PROTECTION AND SECURITY

---

Where the nature of Instep's engagement with you under a Statement of Work or Service Schedule requires Instep to have access to personal or commercial information from you ("data") Instep agrees to:

- 18.1 have systems and processes to ensure that that data is protected from loss, unauthorised access, misuse, modification, or corruption;
- 18.2 ensure Instep staff and contractors comply with your systems and processes for protection of your data; and
- 18.3 hold your data in compliance with all relevant laws and regulations.

---

## 19. FORCE MAJEURE

---

- 19.1 **Force Majeure:** Neither party will be liable for any act, omission, or failure to fulfil an obligation under the Contract if this arises from any cause reasonably beyond either party's control including 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 (Force Majeure).
- 19.2 **Notification:** If either party is unable to 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 the effect of such failure.
- 19.3 **Termination:** If a Force Majeure 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 will 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 **No Assignment:** Neither party may assign its obligations under the Contract or any subsequent agreement to any third party except with the written consent of the other party.
- 20.5 **Variation:** The Contract and any subsequent variation(s) 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.

---

## 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:** A Conflict of Interest shall be deemed to have arisen 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 such that its independence, objectivity, or impartiality may 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 supply 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;

**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 under these Terms of Service 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.