

Instilled

PROFESSIONAL SERVICES AGREEMENT

Standard Terms and Conditions Schedule

This Instilled Professional Services Agreement is entered into by and between gomo Learning Inc. (previously KZO Innovations, Inc.) acting through its division known as Instilled (“Instilled”) and the Client (“Client”) being the organisation specified in the Statement of Work (defined below) that has requested various Professional Services (defined below) from Instilled and describes the terms and conditions pursuant to which Instilled will provide those Professional Services to the Client.

1. DEFINITIONS

The following terms shall have the following meanings:-

“Agreement”	this agreement entered into by and between Instilled and the Client, comprising a Statement of Work and the Conditions (defined below) and any other attachments, schedules or appendices attached to this Agreement and incorporated into it by express reference;
“Change Order”	has the meaning set out in Condition 4;
“Charges”	the fees and expenses payable for the supply of the Professional Services as set out in the Statement of Work and any other amounts payable in accordance with this Agreement;
“Conditions”	the terms and conditions set out in this Schedule;
“Intellectual Property Rights”	means copyrights, patents, rights to patent, utility models, trademarks and service marks (whether or not registered), trade and business names (including Internet domain names and email address names), design rights (whether registered or unregistered), database rights, trade secrets, know-how, unpatented inventions and any other intellectual property rights in any relevant jurisdiction;
“Professional Services”	the services described in the Statement of Work to be provided by Instilled to Client pursuant to this Agreement;
“Professional Services Commencement Date”	the date for commencement of the Professional Services, as set out in the Statement of Work or, where no date is specified, the date the Professional Services are actually commenced;
“Statement of	the Instilled offer, order form, signature page, webpage

Work” and/or statement of work referencing this Agreement and specifying the Professional Services and applicable Charges, as accepted by the Client before the Professional Services Commencement Date and agreed pursuant to Condition 3.

2. CONDITIONS APPLICABLE

- 2.1. This Agreement shall govern the relationship between Instilled and the Client to the exclusion of all other terms and conditions including any terms or conditions which the Client may purport to apply under, or which may be included in, any purchase order for the provision of services, confirmation of order or otherwise.
- 2.2. Where an express, written amendment is made in the Statement of Work to these Conditions, these Conditions shall be deemed amended, as appropriate. However, such amendment shall apply only to the specific Statement of Work where the amendment is referred to and not to any other Statement of Work agreed between the parties. No (other) variation to these Conditions shall be applicable unless agreed in writing by a legal representative of Instilled and by the Client.
- 2.3. This Agreement constitutes the entire agreement between Instilled and the Client in relation to the Professional Services and supersedes any previous agreement, arrangement or understanding, whether written or otherwise, between Instilled and the Client in relation to the Professional Services. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law. If there is any conflict between these Conditions, the Statement of Work and any other part of this Agreement, the documents shall take priority as follows:
 - 2.3.1. the Statement of Work;
 - 2.3.2. these Conditions;
 - 2.3.3. any other part of this Agreement.

3. STATEMENT OF WORK

A Statement of Work is agreed by mutual agreement between the parties and can be in physical form or in electronic or click-wrap form. This Agreement shall come into effect upon execution of a Statement of Work (which for the avoidance of doubt can include clicking on an “I Accept” or similar button, submitting the applicable document electronically, signing and transmission by email, or other agreed method).

4. CHANGE ORDER

- 4.1. A change to the Professional Services (“Change Order”) can be requested by either the Client or Instilled when either party believes that:

- 4.1.1. a change to the originally stated requirements will require extra work/deliverables to deliver those requirements over and above that stated in the existing scope of the Professional Services as defined in the Statement of Work; and/or
- 4.1.2. a change in the volume of deliverables/items/activities which will require extra work to deliver which is over and above that stated in the existing scope of the Professional Services under the applicable Statement of Work; and/or
- 4.1.3. there is a failure by either of the parties to deliver on their respective commitments, as set out in the Statement of Work and/or this Agreement which causes the other party to incur costs that could not reasonably have been anticipated.
- 4.2. No work relating to the Change Order will be executed prior to the Change Order being signed by both parties unless agreed otherwise.
- 4.3. Instilled will use commercially reasonable efforts to accommodate the extra work required within the original (target) timescales but the Client acknowledges that this may not always be practicable and any slippages to original dates or (target) timescales will be communicated by Instilled to the Client.
- 4.4. Where the parties do not agree on a Change Order, Instilled shall have no obligation to proceed with the Change Order.

5. THE PROFESSIONAL SERVICES

- 5.1. The Client shall have a valid Instilled Software-as-a-Service licence in place prior to the start of any Professional Services.
- 5.2. The Client shall at its own expense provide Instilled with all necessary documents or other materials, all data or other information requested by Instilled, and access to all personnel under the Client's authority necessary for the proper performance of the Agreement and the Professional Services, within sufficient time to enable Instilled to provide the Professional Services in accordance with the Agreement.
- 5.3. Where the Professional Services include or comprise training, it is the Client's responsibility to ensure that suitable operatives are made available to undergo such training at the times agreed between the parties. The Client will provide all necessary resources for training including suitable classrooms, AV equipment, laptops or desktops for participants, and suitable Internet connections for the duration of the training.
- 5.4. Any time period quoted for completion/delivery of the Professional Services shall be calculated from the Professional Services Commencement Date.

- 5.5. Instilled may perform the Professional Services through a group company, contractor or subcontractor, as Instilled sees fit, provided that it shall remain responsible for all acts and omissions of such group company, contractor and subcontractor in relation to the Professional Services as if it had performed the applicable Professional Services itself.
- 5.6. Instilled will be available to provide the Professional Services during the times specified in the Statement of Work (if applicable). While Instilled will make commercially reasonable efforts to effect performance of the Professional Services in accordance with any time-scales set out in the Statement of Work or as otherwise agreed in writing by Instilled, no condition or warranty as to time of completion or delivery is given by Instilled and Instilled does not accept liability, nor shall it be liable, for any loss or damage occasioned by delay in delivery howsoever caused, and any time stated for completion or delivery shall not be a term of this Agreement but shall be an estimate only.
- 5.7. Unless it has been expressly agreed in writing between Instilled and the Client that the personnel engaged in the provision of the Professional Services shall provide the Professional Services on an exclusive basis until completion of the applicable Professional Services, Instilled reserves the right to use such staff on other tasks or other projects as required by Instilled and otherwise to change, replace or substitute the staff involved in the Professional Services as Instilled sees fit.
- 5.8. The scope of the Professional Services shall be as set out in the Statement of Work or as otherwise agreed in writing by the parties. Where any changes to the Professional Services are requested, the provisions of Condition 4 shall apply.

6. PAYMENT AND CHARGES

- 6.1. The Client will pay the Charges and any additional sums which are agreed by the parties for the provision of the Professional Services within 30 (thirty) days of the date of Instilled invoice, unless otherwise specified in the Statement of Work or otherwise agreed in writing.
- 6.2. All charges quoted by Instilled are exclusive of any value added tax and any other applicable local, regional or national taxes, levies or charges, for which the Client will be additionally liable at the rate applicable at the date of Instilled's invoice.
- 6.3. Unless otherwise agreed by Instilled in writing or specified in the Statement of Work, the Charges are exclusive of travelling, subsistence and out of pocket expenses incurred in performing the Professional Services, which expenses will be added to Instilled's invoices and appropriate receipts furnished to the Client.

6.4. Where Charges due to Instilled have not been received in accordance with the Statement of Work, Instilled will be entitled to:

6.4.1. suspend the Professional Services or, at its option, terminate the Agreement; and/or

6.4.2. charge interest on the outstanding Charges (both before and after any judgment) at the rate of 1.5% per month over the outstanding amount, compounded monthly, from the due date until the outstanding amount is paid in full.

7. INTELLECTUAL PROPERTY RIGHTS

Subject to payment in full of all Charges due to it, Instilled undertakes to grant to the Client, a royalty-free, non-exclusive, non-sub-licensable and non-transferable right to use the output of the Professional Services for the Client's own internal business purposes only and only for the duration of, and through the subscription services agreement between Instilled and the Client. All Intellectual Property Rights in and to the output of the Professional Services shall at all times remain with and vest in Instilled.

8. CONTRACT MANAGEMENT

8.1. The Client shall nominate a (project) manager who shall be authorised to supervise and liaise with Instilled personnel engaged in the provision of the Professional Services.

8.2. Where stated in a Statement of Work, Instilled shall nominate a project manager who shall be authorised to agree on Instilled's behalf to operational matters relating to the provision of the Professional Services provided always that no proposed variation to these Conditions or this Agreement shall be binding upon Instilled unless agreed in writing by a legal representative of Instilled.

9. WARRANTY

9.1. Subject to the exceptions set out in this Condition and the limitation of liability provisions in Condition 10, Instilled warrants that it will perform the Professional Services with reasonable skill and care and that the output of the Professional Services when properly used in accordance with Instilled's instructions and any instructions in the Statement of Work, shall materially provide the facilities and/or functions described in the Statement of Work for a period of 90 days from delivery of the applicable Professional Services.

9.2. Instilled does not warrant that the operation of the output of the Professional Services shall be uninterrupted or error-free.

- 9.3. The warranty at Condition 9.1 is subject to the Client giving Instilled notice as soon as reasonably practicable upon becoming aware of or suspecting any breach of warranty. When notifying Instilled of such a breach of warranty, the Client shall provide Instilled with such documented information, details and assistance as Instilled may reasonably request. Instilled undertakes to use commercially reasonable endeavours to remedy, free of charge to the Client, any breach of warranty so notified to Instilled in accordance with this Condition 9. This states Instilled's sole liability and the Client's sole remedy for a breach of the warranty at Condition 9.1.
- 9.4. EXCEPT AS SET OUT IN CONDITION 9.1, ALL OTHER WARRANTIES, TERMS AND CONDITIONS AS TO THE PROFESSIONAL SERVICES, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING (WITHOUT LIMITATION) ANY NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.
- 9.5. Instilled shall not be liable to the Client for any breach of any warranty or for the breach of any Condition unless it is given a reasonable opportunity after receiving the notice to remedy the breach.
- 9.6. If the alleged breach of warranty is found, upon investigation by Instilled, not to have been the result of any breach of warranty under Condition 9.1, Instilled shall be entitled to charge for all reasonable costs and expenses incurred by it in the course of, or in consequence of such investigation.
- 9.7. Instilled shall not, in any event or under any circumstances, be liable to remedy any breach arising from or caused by any modification (whether by way or alteration, deletion, addition or otherwise) made to any part of the output of the Professional Services by persons other than Instilled except where such alterations, deletions, additions or otherwise were carried out at Instilled's explicit direction.

10. LIMITATION OF LIABILITY

- 10.1. Subject to Condition 10.2, the following provisions set out Instilled's entire liability (including any liability for the acts or omissions of Gomo Learning Limited, any of its affiliates, and its and their employees, agents and sub-contractors) to the Client in respect of:
- 10.1.1. any breach of its contractual obligations arising under the Agreement;
 - 10.1.2. any breach of any warranty under the Agreement;
 - 10.1.3. any representation, statement, tortious act or omission including negligence arising under the Agreement; and/or
 - 10.1.4. any indemnity obligation under this Agreement.

- 10.2. Instilled's liability to the Client for death or personal injury from Instilled's, or that of its employees' or authorised agents' negligence while acting in the course of the Professional Services, or in respect of any fraud, shall not be limited.
- 10.3. SUBJECT AS PROVIDED IN THIS CONDITION 10, INSTILLED'S (INCLUDING ANY GROUP COMPANIES, CONTRACTORS AND SUBCONTRACTORS INVOLVED IN THE PERFORMANCE OF THE PROFESSIONAL SERVICES) TOTAL LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY) MISREPRESENTATION (OTHER THAN FRAUDULENT) OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE PERFORMANCE OF THE PROFESSIONAL SERVICES SHALL NOT EXCEED THE LESSER OF (I) THE CHARGES PAID FOR THE PROFESSIONAL SERVICES UNDER THE APPLICABLE STATEMENT OF WORK, AND (II) \$100,000 IN RESPECT OF ANY ONE CLAIM OR SERIES OF CLAIMS ARISING OUT OF THE SAME INCIDENT.
- 10.4. INSTILLED SHALL NOT BE LIABLE FOR:
- 10.4.1. ANY DEATH OR PERSONAL INJURY NOT CAUSED BY ITS NEGLIGENCE OR THAT OF ITS EMPLOYEES OR AUTHORISED AGENTS;
- 10.4.2. ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL LOSSES (INCLUDING LOSS OR DAMAGE SUFFERED BY THE CLIENT AS A RESULT OF AN ACTION BROUGHT BY A THIRD PARTY) EVEN IF SUCH LOSS WAS REASONABLY FORESEEABLE; AND/OR
- 10.4.3. ANY LOSS OF REVENUE, LOSS OF PROFIT, LOSS OF ACTUAL OR ANTICIPATED SAVINGS, LOSS OF BUSINESS, LOSS OF DATA OR INFORMATION, LOSS OF OPPORTUNITY, DEPLETION OF GOODWILL OR OTHERWISE OR FOR ANY COSTS, EXPENSES OR OTHER CLAIMS FOR CONSEQUENTIAL LOSS WHATSOEVER (AND HOWSOEVER ARISING) WHICH ARISES OUT OF OR IN CONNECTION WITH THE AGREEMENT, EVEN IF INSTILLED HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.
- 10.5. Instilled shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied to Instilled by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.
- 10.6. The provisions of this Condition 10 shall continue to apply notwithstanding the termination or expiry of the Agreement for any reason whatsoever.

- 10.7. A party shall not be liable to the other party or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that party's obligations in relation to the Agreement, if the delay or failure was due to any cause beyond that party's reasonable control.
- 10.8. The causes beyond a party's reasonable control referred to in Condition 10.7 shall include, but not be limited to, any act of God, action by any government, parliamentary or local authority, import or export regulations, or strike, lockout, breakdown of equipment or machinery, power failure, interruption to power supply, fire, accident, shortage or unavailability of raw materials.
- 10.9. Each party agrees to notify the other in writing of its inability to meet its obligations in relation to the Professional Services for the reasons set out in Conditions 10.7 and 10.8. Any time estimate or fixed date agreed for completion of the Professional Services shall be extended by the length of the delay, but if the delay extends beyond sixty days either party will have the right to cancel the Agreement without compensation having advised the other party in writing of its intention to do so.

11. INDEMNITY

- 11.1 Instilled shall indemnify and keep the Client indemnified and defend the Client against any claims made against the Client by a third party that the output of the Professional Services infringes the copyright, trademark or confidential information of that third party.
- 11.2 The Client shall indemnify and keep Instilled indemnified against any loss, action, cost, expense, damage or claim incurred or suffered by Instilled as a result of Instilled incorporating any material supplied by the Client into the output of any Professional Services following the Client's instructions or the Client not having the necessary consents, authorisations or permits in place to be able to receive or use the Professional Services properly.

12. CONFIDENTIALITY AND NON-SOLICITATION

- 12.1. Each party may have access to Confidential Information of the other party under the Agreement. A party's Confidential Information shall not include information that:
 - 12.1.1. is or becomes publicly known through no act or omission of the receiving party; or
 - 12.1.2. was in the receiving party's lawful possession prior to the disclosure; or
 - 12.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

- 12.1.4. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body; or
- 12.1.5. is required to be disclosed pursuant to the rules of any listing authority or recognised stock exchange on which the shares of that party or any company in its group are listed.
- 12.2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 12.3. Each party agrees to take commercially reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 12.4. Neither party during the period of the provision of the Professional Services and for a period of 6 months after expiry or termination, howsoever caused, thereof, shall solicit, engage or offer engagement to any person employed by or acting on behalf of the other party who was assigned to provide services in connection with the Agreement. For the purposes of this Condition, "solicit" means the soliciting of such person with a view to engaging such person as an employee, director, sub-contractor or independent contractor and "engage" and "engagement" shall be construed accordingly.
- 12.5. On termination of this Agreement or the Professional Services for any reason, each party shall promptly return all Confidential Information of the other, or at the discretion of the party whose Confidential Information it is, destroy it and confirm in writing that this has been done.

13. TERMINATION

- 13.1. Instilled shall have the right (without prejudice to any other right or remedy) to terminate the Professional Services and Agreement by notice in writing to the Client with immediate effect if any of the following occurs:
- 13.1.1. a liquidator, (other than for the purpose of solvent amalgamation or reconstruction) administrator, administrative receiver or receiver is appointed in respect of the whole or part of the Client's assets and/or undertaking or the Client enters into an arrangement or composition with its creditors, or if the Client becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as may be amended from time to time) (or any equivalent national legislation if the Client is a foreign person, firm or company) or other circumstances arise which entitle the court of a creditor to appoint a receiver, administrative receiver or administrator or to make a winding up order in relation to the Client;

- 13.1.2. the Client fails to make any payment when it becomes due to Instilled;
- 13.1.3. Instilled discovers, or in its reasonable opinion, suspects, that there has been any fraud or attempted fraud or any other criminal offence in connection with the (use of) the Professional Services.
- 13.2. Either party shall have the right (without prejudice to any other right or remedy) to terminate the Agreement by notice in writing to the other if the other defaults in due performance of any material obligation under this Agreement and (in the case of a remediable breach) fails to remedy the breach within a reasonable period of time (not being less than 30 days) specified by the other in such notice.
- 13.3. If the Agreement is terminated by Instilled pursuant to Conditions 13.1 or 13.2, then notwithstanding such termination, the Client shall forthwith pay to Instilled all arrears of Charges payable under the Agreement (if any) up to the date of termination and the Charges in respect of all Professional Services delivered up to the date of termination.

14. NOTICE

- 14.1. Any notice to be given under the Agreement shall be in writing and shall be deemed to have been given if left or sent by hand or by registered post, or by facsimile or such other electronic media which may from time to time be agreed by the parties to a party at the address or facsimile number or email address set out in the Statement of Work or such other address or facsimile number as one party may from time to time designate by written notice to the other.
- 14.2. Any such notice or other document shall be deemed to have been received by the addressee three working days following the date of dispatch if the notice or other document is sent by registered post, or simultaneously with the delivery or transmission if sent by hand or if given by facsimile or other electronic means, unless notice of a failed delivery is received or the transmission reports shows that the transmission failed.
- 14.3. All notices served under the Agreement shall be in the English language.

15. WAIVER

No failure or delay by either party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provisions.

16. SEVERABILITY

If any provision, or part thereof, of the Agreement shall be held, by any competent authority, to be invalid or unenforceable, the validity of the other provisions of the Agreement and the remainder of the provision in question shall not be affected, provided that if the effect of the deletion of the invalid or unenforceable provision is to materially change the nature of the Agreement or the rights or obligations of either the Client or Instilled in respect thereof, the parties shall use all reasonable endeavours to agree a valid or enforceable amendment to these Conditions to reflect as closely as possible their original intentions pursuant to the invalid or unenforceable provision.

17. STATUS OF THE PARTIES

Instilled shall provide the Professional Services as an independent contractor and not as agent, partner, joint venturer or otherwise. Neither party shall have any authority or hold itself out as having any such authority to enter into any commitment or contract, whether expressly or by implication, in the name of or on behalf of the other party without the other party's prior written consent.

18. JURISDICTION

This Agreement shall be governed by and interpreted in accordance with the laws of Delaware, without regard to its conflicts of law principles or to the United Nations Convention on the International Sale of Goods. Each Party irrevocably consents to the exclusive jurisdiction, forum and venue of the Courts of Delaware over any and all claims, disputes, controversies or disagreements between the Parties or any of their respective subsidiaries, affiliates, successors and assigns under or related to this Agreement or any document executed pursuant to this Agreement or any of the transactions contemplated hereby. This Agreement, and any communications or disputes concerning this Agreement shall be in the English language.

19. PUBLICITY

Instilled shall not include the Client's name in its portfolio of clients without the Client's prior written consent.

20. RIGHTS OF THIRD PARTIES

No term of the Agreement shall be enforceable by a third party.