

# Passionfruit Client Terms

Last updated: March 2026 (Compliance Remediation Update). Previously: 22 May 2025.

## Rules of the Road

There is a lot of small print below for the lawyers among you, but this will give you a quick sense of what they say.

**Please be respectful and know that everyone is trying their best.** The best work happens in clean and well-lit places where respect, clear communication and constructive feedback is encouraged. Anyone working with Passionfruit is asked to treat people the way they'd like to be treated.

**In the end, you're responsible for the decisions you make and the actions you take.** Our role is to help facilitate the best possible work and collaboration that we can. We take that role seriously and will always go the extra mile to make it happen. Ultimately though, the buck stops with you.

**No funny business when it comes to payment.** Payment for projects is taken in money — not equity or cryptocurrency, for the time being. We typically issue invoices up front for each month of the project and take payment within 30 days. We release it for the specialist's services at the end of the following month. It's quite simple really.

**Let's play fair: we're running a business too.** We're not big believers in the stick: we've intentionally designed a carrot-led experience which encourages users and specialists to stay "on platform". That said, if you try to go around us, we will have no issues getting the stick out and using our rights in the small print.

Passionfruit is Use Passionfruit Limited (company number 13237931) with registered office at Camburgh House, 27 New Dover Road, Canterbury, Kent, United Kingdom, CT1 3DN. VAT number 374633676. Passionfruit is a United Kingdom (UK) based employment business for the purposes of the Conduct of Employment Agencies and Employment Business Regulations 2003 (Conduct Regulations) and regulated by the UK's Employment Agency Standards Inspectorate.

Client means a client approved by Passionfruit to use the platform available at usepassionfruit.com (Platform) for the purpose of engaging with Passionfruit's specialist services, facilitating project management, and collaborating on engagements as described in these Terms.

Passionfruit operates as an 'employment business' as defined by the Conduct Regulations 2003. In its contractual relationship with the Client, Passionfruit acts as the Principal, supplying specialist services via independent Specialists engaged as subcontractors. Passionfruit does not act as an agent for the Client for IR35 or PAYE purposes.

In these terms and conditions each of Passionfruit and the Client is a Party and together they are the Parties.

Clients engage Use Passionfruit Limited (Passionfruit), who acts as the Principal in this Agreement. For regulatory purposes under the Conduct of Employment Agencies and Employment Businesses Regulations 2003, Passionfruit operates as an Employment Business. Passionfruit supplies professional services to the Client under a specialist engagement model. These services are performed by independent freelance specialists (Specialists) who may operate as sole traders, via Personal Service Companies (PSCs), or other intermediaries, and determine their own fees (Specialist Fees). Specialists are engaged by Passionfruit under separate contracts for professional services. The Client's contract is solely with Passionfruit; there is no direct contractual relationship between the Client and the Specialist, although the Specialist delivers their services directly to the Client and retains discretion over how their work is carried out consistent with the agreed scope. Prior to the agreement of a Statement of Work (SOW), neither the Client nor the Specialist is under any obligation to proceed with a proposed

project or Specialist. Once agreed, the SOW documents the specific scope of services, fees, and duration for each engagement. The Client receives the Specialist's services and is typically considered the 'end client' or 'end-user' for the purposes of the Off-Payroll Working (IR35) rules, with associated responsibilities determined by that legislation, including client size tests.

Sign up to use the Platform at [usepassionfruit.com/company-sign-up](https://usepassionfruit.com/company-sign-up). By submitting a request to use the Platform, a user expressly confirms to Passionfruit: That the user has read and agrees to Passionfruit's terms and conditions and will comply with them. That if the user is registering on behalf of their employer or any other person, that the user has authority to register and agree to Passionfruit's terms and conditions on that person's behalf (which will be legally binding on that other person).

If you cannot agree to the Passionfruit terms and conditions, please do not submit a request to use Passionfruit's services.

Any person using the Platform will be bound by Passionfruit's terms and conditions (as updated and published by Passionfruit from time to time at [usepassionfruit.com/terms](https://usepassionfruit.com/terms)) for so long as the Client has a user login to Platform.

Passionfruit will consider each request to use the Platform and determine which potential clients to register as Clients. If Passionfruit accepts a potential client as a Client, Passionfruit will confirm this to the Client by notifying the Client by email or signing an order form (Order Form), each of which is Platform Acceptance.

With effect from the point of Platform Acceptance the Parties agree to be bound by the Passionfruit Client Terms below.

An agreement subject to the Passionfruit Client Terms shall be in place from Platform Acceptance until termination under the Passionfruit Client Terms (Agreement).

The Passionfruit Client Terms comprise: Part A: Client Platform Terms – these apply between Passionfruit and the Client and govern how the Client uses Platform and the relationship between Passionfruit and the Client generally. Part B: Specialist Supply Terms – these apply between Passionfruit and the Client when Passionfruit supplies services via a Specialist.

For each Project that Passionfruit supplies the Specialist for, a separate Specialist Supply Contract is formed between Passionfruit and the Client under the Specialist Supply Terms when the SOW is agreed.

The Passionfruit Client Terms were last updated on March 2026. For any questions, please contact [josh.wildman@usepassionfruit.com](mailto:josh.wildman@usepassionfruit.com).

# Part A: Client Platform Terms

## 1. Onboarding

- 1.1.** At Platform Acceptance Passionfruit will begin the process of onboarding the Client (Onboarding).
- 1.2.** The Client shall provide all information requested by Passionfruit for Onboarding.
- 1.3.** The Client shall ensure that all information provided to Passionfruit does not contain any material which could be regarded as offensive, indecent, obscene, illegal, dishonest, untruthful, defamatory or discriminatory.
- 1.4.** The Client shall keep all logins to Platform (User Credentials) secret and secure and not allow any person to share any logins.
- 1.5.** The Client is responsible for all use of Platform by the Client, employees, workers, contractors, directors, officers, agents, outsourcers and subcontractors (Client Users).
- 1.6.** The Client shall procure the Client Users' compliance with The Agreement.
- 1.7.** Off-Payroll Working Rules means Chapter 10, Part 2, Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and the HMRC guidance set out at: <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10000>.
- 1.8.** Under the Off-Payroll Working Rules, the responsibility for determining the employment status for tax purposes (IR35 status) of a Specialist engaged via an intermediary (such as a PSC) typically rests with the end Client receiving the Specialist's services, unless the Client qualifies as a 'small company' under the relevant legislation.
- 1.8A.** Where a worker classification assessment conducted under clause 4.21B returns a determination of inside IR35, and annually thereafter (or when the Client's accounting period changes), the Client shall provide Passionfruit with a completed Client Size Declaration confirming whether the Client meets the criteria for a 'small company' under the Companies Act 2006 (as amended). A company is classified as small if it meets two of the following three criteria: (i) annual turnover not exceeding £15 million; (ii) balance sheet total not exceeding £7.5 million; (iii) average of no more than 50 employees. The Client warrants that the information provided in the Client Size Declaration is accurate and complete at the time of submission. Passionfruit shall be entitled to rely on the Client Size Declaration in determining the allocation of responsibilities under the Off-Payroll Working Rules.
- 1.9.** The Client warrants that it will comply with its obligations under the Off-Payroll Working Rules, including making status determinations and issuing Status Determination Statements (SDS) where required by law.
- 1.10.** Passionfruit is not the end-user for the purposes of these rules and does not determine IR35 status under Chapter 10 ITEPA 2003. (See also Part B clause 4).
- 1.11.** When Onboarding is complete Passionfruit will begin matching Specialists from its network to Client requests.

## **2. Relationship Management & Platform Success**

- 2.1.** The Client shall appoint a relationship contact (Client Contact).
- 2.2.** The Client Contact and Passionfruit's account manager (Passionfruit Contact) shall meet as may be reasonable to discuss the Client's use of Platform to gather feedback and drive the success of the relationship and the Client's use of Platform.
- 2.3.** Passionfruit's Platform Success Team supports the Client in defining project needs and documents these in a Statement of Work (SOW), which Passionfruit then uses to identify and contract with a suitable Specialist.
- 2.4.** Available Projects are presented to Specialists as being engaged on a month-by-month basis (Project Month) subject to a standard 7 (seven) business days' notice period before the end of a Project Month.
- 2.5.** If the Client requires a different period for an Available Assignment, the Client shall inform Passionfruit.
- 2.6.** The Client shall in its use of Passionfruit's services (Specialist Engagement): (a) provide Passionfruit with all necessary information and co-operation in a timely, accurate, complete and compliant manner, as may be required by Passionfruit to enable the Client to use Platform (including for compliance purposes); (b) comply with Applicable Law (as the context requires: (i) applicable UK laws (including the Off-Payroll Working Rules), regulations (including the Conduct Regulations), regulatory requirements and mandatory codes of practice (UK Law); and/or (ii) the Client's applicable local laws, regulations, regulatory requirements and mandatory codes of practice (Local Law), each as amended and in force from time to time); and (c) not knowingly or recklessly do, or omit to do, anything which may cause Passionfruit or any other person using Platform to be in breach of Applicable Law or suffer reputational damage.
- 2.7.** Specialists are critical to the success of the Platform.
- 2.8.** They have also chosen to be freelancers and Passionfruit wants to keep them happy and productive members of the Platform.
- 2.9.** Therefore, the Client acknowledges that Specialists engaged by Passionfruit are independent contractors providing professional services.
- 2.10.** Accordingly, the Client shall not supervise, direct, or control the Specialist in a manner akin to an employee, respecting their status as independent professionals responsible for the delivery of their services.
- 2.11.** The Client shall provide necessary briefing, information, and access required for the Specialist to perform the agreed services.
- 2.12.** The Client shall: (a) not do anything or act in any way which may result in any Specialist: (i) being treated as any employee or worker of the Client under Applicable Law relating to employment or labour law and/or employment status; or (ii) being provided with any benefits usually available solely to employees and/or workers of the Client; (b) not knowingly or recklessly do, or omit to do, anything which may cause a Specialist to be in breach of Applicable Law or suffer reputational damage; (c) treat Specialist with respect and irrespective of their physical appearance, age, sex, marital or family status, health or pregnancy status, sexual orientation or gender identity or expression, religion, religious belief, trade union membership, colour, race, ethnic or national origin or any disability which they may have; and (d) not bully, harass or otherwise unlawfully discriminate against any Specialist.
- 2.13.** Employment Business rules apply with respect to sole traders and means Chapter 7, Part 2 ITEPA, section 44, and the HMRC guidance set out at <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm2034>.
- 2.14.** Where a Specialist is engaged as a sole trader, Passionfruit accepts responsibility as the agency for determining whether the working relationship gives rise to deemed employment under Chapter 7, Part 2 ITEPA 2003 (Agency Legislation) and will ensure compliance with any resulting PAYE obligations.

**2.15.** Passionfruit is responsible for facilitating the engagement of Specialists via the Platform and ensuring that the contractual process and payment mechanisms function as agreed.

**2.16.** While Passionfruit contracts separately with each Specialist, the Specialist remains an independent contractor and is solely responsible for the provision and quality of their services.

**2.17.** Passionfruit is not responsible for the Specialist's day-to-day performance or specific deliverables, although Passionfruit remains the Client's principal contractual counterparty for the overall supply of the specialist services.

### **3. Platform Technology**

**3.1.** Intellectual Property Rights means all vested and future rights of copyright and related rights, design rights, database rights, patents, rights to inventions, trademarks and get-up (and goodwill attaching to those trademarks and that get up), domain names, social media assets, applications for and the right to apply for any of the above, moral rights, goodwill (and the right to sue for passing off and unfair competition), rights in know-how, rights in confidential information, rights in computer software, and any other intellectual or industrial property rights or equivalent forms of protection, whether or not registered or capable of registration, and all renewals and extensions of such rights, whether now known or in future subsisting in any part of the world.

**3.2.** Nothing in the Client Platform Terms shall transfer the Intellectual Property Rights of Passionfruit or its licensors to the Client or any third party.

**3.3.** Passionfruit or its licensors own all Intellectual Property Rights in Platform and Services, including design, look and feel, functionality, underlying code and databases and development plans/roadmap (Passionfruit Technology).

**3.4.** The underlying code and databases of Platform are trade secrets.

**3.5.** Passionfruit shall use reasonable skill and care to keep the Passionfruit Technology operational.

**3.6.** Passionfruit keeps users of Platform informed of any scheduled outages for maintenance.

**3.7.** Should any part of the Platform controlled by Passionfruit suffer any unexpected outage, Passionfruit shall use good industry practice to work the problem, including diagnosis, applying patches, hot fixes and workarounds.

**3.8.** During any outage the Client can still engage Specialists manually using the support of the Platform Success Team.

**3.9.** The Passionfruit name, Passionfruit logo and any other Passionfruit trademarks, service marks and brand properties (such as domain names and social media assets) used in connection with Passionfruit or Platform are trademarks and registered trademarks of Passionfruit (Passionfruit Marks).

**3.10.** Other than as necessary to use Platform in accordance with the Client Platform Terms, the Client is not granted any rights or licences in Passionfruit Marks.

**3.11.** Subject to the Client's compliance with the Client Platform Terms, Passionfruit grants the Client a non-exclusive, non-transferable, world-wide right, without the right to grant sub-licences (save as permitted by 3.10), to: (a) via a browser login and use Platform in accordance with its functionality; and (b) view and use user materials (User Materials), in each case solely as necessary for the Client to use the Platform internally for its intended purpose.

**3.12.** The Client hereby grants to Passionfruit a royalty-free, transferable, world-wide right to copy, display, distribute, modify and otherwise use any information or materials provided or uploaded by the Client or on the Client's behalf by any other person (Client Uploads) in connection with Passionfruit providing Platform to the Client.

**3.13.** In addition to the licence in clause 3.12, the Client grants Passionfruit a perpetual right to use the Client Uploads solely for Passionfruit's lawful internal business purposes, expressly including: (a) providing compliance related the Client Uploads to the intended recipients under Applicable Law; (b) documenting Passionfruit's compliance with Applicable Law (including for internal and external audit); (c) obtaining advice from Passionfruit's legal, tax and accountancy advisers; and (d) evidencing Passionfruit's compliance with Applicable Law to any person charged with a regulatory function under Applicable Law.

**3.14.** Where Platform provides functionality for the Client to download any contracts, compliance documents or other information (Client Downloads), Passionfruit grants the Client a perpetual right to use the Client Downloads solely for the Client's lawful internal business purposes.

**3.15.** The Client's internal business purposes expressly include: (a) providing compliance related the Client Downloads to the intended recipients under Applicable Law; (b) documenting the Client's compliance with Applicable Law (including for internal and external audit); (c) obtaining advice from the Client's legal, tax and accountancy advisers; and (d) evidencing the Client's compliance with Applicable Law to any person charged with a regulatory function under Applicable Law.

**3.16.** Unless required by Applicable Law, the Client may not sub-licence Passionfruit Technology (including User Materials and the Client Downloads) to any third party outside of the scope of the licences in clause 3.

**3.17.** Passionfruit may collect information reflecting the access or use of Platform by users, including visit, session and statistical or other analysis, information or data based on or derived from any of the foregoing (Usage Data) and may aggregate and/or anonymise Usage Data to use for statistical purposes and share samples of such aggregated and/or anonymised Usage Data with other persons outside Passionfruit, including potential clients and investors in Passionfruit.

**3.18.** To the extent the Client provides any suggestions, comments or other feedback related to the specialist services supplied (Feedback), the Client hereby grants Passionfruit a non-exclusive, perpetual, irrevocable, royalty-free, sub-licensable, transferable world-wide license to copy, display, distribute, perform, modify and otherwise use Feedback in any way and without limitation.

**3.19.** Except as expressly permitted by Passionfruit under the Client Platform Terms, the Client shall not: (a) otherwise use, copy, modify, adapt or create derivative works of any Passionfruit Technology or the Client Downloads; (b) attempt to translate, decompile, disassemble, reverse engineer or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs of Passionfruit Technology unless mandated by UK Law; (c) conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other data collection activity, whether or not systematic or automated; (d) incorporate Passionfruit Technology or the Client Downloads into any product or service provided by the Client; (e) assign, transfer, sublicense, rent, lease, resell, provide access to, distribute or otherwise deal in or encumber Passionfruit Technology; (f) remove, obscure, or alter any copyright, trademark, or other proprietary rights notices, or any of Passionfruit's or any third party's branding, that Platform causes to be displayed when used (including as part of any Client Downloads); (g) falsify or delete any attributions or legal notices or misrepresent the source or ownership of material; (h) publicly disseminate non-public information regarding the functionality, operation or performance of Platform; (i) use Platform for competitive analysis or to build competitive products or services; or (j) use Platform or the Client Downloads, or permit Platform or the Client Downloads to be used, for the benefit or on behalf of any third party.

**3.20.** Each Party shall use good industry practice to ensure that no Malicious Item is connected to, ingested into, transmitted through, or stored on, Platform.

**3.21.** Malicious Item means any thing or device (including any software, code, file or program) which may: (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device, (b) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by rearranging, altering or erasing the program or data in whole or part or otherwise) or (c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

## **4. When Passionfruit Acts as an Employment Business**

**4.1.** For the purposes of the Conduct Regulations, Passionfruit acts as an employment business in relation to the supply of any Specialist to the Client for a Project.

**4.2.** This designation applies solely for the purposes of compliance with the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

**4.3.** Passionfruit is the Principal in the contractual supply of specialist services.

**4.4.** Before Passionfruit supplies any Specialist to the Client, the Client shall provide the following information to Passionfruit via Platform or Platform Success Team (to be confirmed in writing via the Platform) for the Available Project: (a) Available Project start date; (b) type of Specialist; (c) an overview of the Available Project Passionfruit is being asked to supply the Specialist for; (d) the location where the Specialist will normally be expected to undertake the Available Project; (e) the duration or likely duration of the Available Project; (f) deliverables and milestones expected.

**4.5.** The Client shall also provide any health and safety information relevant to the required services, and any regulatory or professional qualifications the Specialist may be expected to hold in order to deliver the services in a compliant manner.

**4.6.** Passionfruit will propose suitable Specialists from its network for each Available Project, based on information provided by the Client.

**4.7.** Passionfruit remains the Principal in the engagement and is responsible for contractual delivery of the specialist engagement.

**4.8.** Passionfruit will use reasonable care in identifying and proposing Specialists based on the information provided by the Client and the Specialist but cannot guarantee to find a suitable Specialist for each Available Project.

**4.9.** Passionfruit gives no warranty as to the suitability or performance of any Specialist beyond exercising reasonable care in their selection and vetting.

**4.10.** Passionfruit undertakes reasonable due diligence to confirm that Specialists proposed to the Client hold the experience, qualifications, and authorisations required for the Available Project, based on information provided by the Specialist.

**4.11.** The Client may request additional checks to be performed by Passionfruit as part of the vetting process.

**4.12.** The Client acknowledges that final suitability is a subjective commercial assessment.

**4.13.** Passionfruit remains the contractual counterparty for payment and administrative purposes, but the Specialist is solely responsible for the delivery and quality of their work/services.

**4.14.** Where a Specialist is engaged via a personal service company (PSC) or other intermediary, applicable employment and tax laws (such as the UK's Off-Payroll Working Rules or similar laws in other jurisdictions) may require a determination of the Specialist's deemed employment status.

**4.15.** The responsibility for making any such status determination (including issuing a Status Determination Statement where required) lies with the end-user under applicable law, which will typically be the Client unless the Client qualifies for an exemption (such as being a "small company" under the UK's Off-Payroll Working Rules).

**4.16.** Where Passionfruit is required by law to act as the fee-payer (e.g., if an engagement is deemed inside IR35 and Passionfruit is the party paying the Specialist's intermediary), it shall: deduct and remit any required employment taxes or levies; and pay the net amount to the Specialist's intermediary in accordance with local tax laws.

**4.17.** For sole traders, Passionfruit remains responsible for determining employment status under Chapter 7, Part 2 ITEPA 2003 (Agency Legislation) and applying any tax withholdings required under applicable law.

**4.18.** Except as otherwise required by law (e.g., under PAYE for sole traders per clause 4.17, or as fee-payer per clause 4.16), the Specialist remains responsible for their own tax compliance.

**4.19.** The Client shall not be liable for tax determinations or payments where legislation places the obligation on Passionfruit (e.g. under clause 4.17) or the Specialist's intermediary (e.g. if the Client is a 'small company' under Off-Payroll Working Rules).

**4.20.** Passionfruit is responsible for conducting any required right to work checks in accordance with the Immigration, Asylum and Nationality Act 2006, the Immigration Act 2016, and other applicable laws regarding the engagement of non-UK nationals.

**4.21.** The Client shall not be responsible for performing right to work checks under the current engagement structure, as Passionfruit is the Principal engaging the Specialist and supplying their services to the Client.

**4.21A.** Where any part of the supply chain for a Specialist engagement involves a third-party umbrella company or payroll intermediary, the Client shall: (a) notify Passionfruit in writing prior to the commencement of the engagement; (b) cooperate with Passionfruit's reasonable due diligence requirements regarding the umbrella company, including verification of accreditation status and PAYE/RTI compliance; and (c) provide Passionfruit with such information as Passionfruit may reasonably request to discharge its obligations under Chapter 11, Part 2 of ITEPA 2003 (Joint and Several Liability provisions) or any successor legislation.

**4.21B.** Passionfruit shall conduct an independent worker classification assessment for each new Specialist engagement using its approved assessment provider. Where the Client is a medium or large entity responsible for issuing the Status Determination Statement under the Off-Payroll Working Rules, the assessment provided by Passionfruit is advisory and does not override the Client's statutory determination. In the event of a conflict between the Client's Status Determination Statement and Passionfruit's assessment, the Client's determination shall prevail for statutory purposes, and Passionfruit reserves the right to decline the engagement on a commercial basis. The Client shall cooperate with and provide accurate information for this assessment process as reasonably requested by Passionfruit. The fees associated with compliance coverage are set out in clause 6.24.

**4.22.** The Client shall, within 24 hours of Passionfruit's first provision of information relating to Specialist's identity, inform Passionfruit if the Client believes that it is aware of the identity of Specialist other than via Passionfruit.

**4.23.** The Client agrees that it will be deemed not to have been aware of the identity of Specialist prior to Passionfruit's provision of the information relating to Specialist's identity if the Client fails to provide such a notice within the 24 hours.

**4.24.** With effect from the point the Platform records the agreed SOW, Passionfruit and the Client agree to be bound by the Specialist Supply Terms at Part B, and a single Specialist Supply Contract is formed directly between Passionfruit and the Client for the Project set out in the SOW.

**4.25.** At the same time as Clause 4.24, a separate single Specialist Contract is formed directly between Specialist and Passionfruit subject to separate Specialist Terms.

**4.26.** If, after the SOW has been agreed, Passionfruit receives information that gives it reasonable grounds for believing that the Specialist is unsuitable for the Available Project, Passionfruit shall inform the Client and (unless the Client reasonably requests otherwise) Passionfruit shall give immediate notice to Specialist to terminate the corresponding agreement between Specialist and Passionfruit (Specialist Contract).

## **5. Passionfruit as an Employment Business (Clarification)**

**5.1.** Passionfruit operates as an employment business facilitating the engagement of independent Specialists by Clients.

**5.2.** All specialist services are delivered under a contractual arrangement between Passionfruit (as Principal) and the Client, with Passionfruit engaging the Specialist as an independent subcontractor.

## **6. Charges & Taxes**

**6.1.** Passionfruit's charges to the Client are set out on Platform (including any Specialist Fees charged by the Specialist) and/or Order Form.

**6.2.** The Charges are invoiced and payable in the same currency (GBP/USD/EUR).

**6.3.** The Client is responsible for any exchange rate fees and risk it incurs. The Client shall pay Passionfruit the Charges.

**6.4.** The Specialist Supply Terms set out how payments subject to the Off-Payroll Working Rules are treated.

**6.5.** The Client shall pay Passionfruit's invoices as follows: (a) Invoice payments: The Client shall pay Passionfruit by bank transfer within 30 days of the date of the invoice; (b) Within 7 days of the Transfer Fee invoice date.

**6.6.** The Charges do not include value added tax or any tax of a similar nature applicable to payment of the Charges (VAT).

**6.7.** The Client shall pay any VAT in addition to the Charges without set-off or withholding and if withholding is required by Applicable Law, the Client shall gross up its payment accordingly.

**6.8.** If the Client fails to pay in full on the due date any amount payable by it: (a) interest on the outstanding amount shall accrue on a daily basis from the due date until the date of payment (whether before or after judgment) at the higher of: (i) 8% per annum above the base rate of the Bank of England or (ii) the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998; and (b) the Client shall on demand reimburse Passionfruit against expenses reasonably incurred and evidenced in connection with recovery of unpaid amount.

**6.9.** Unless required by the Off-Payroll Working Rules (or Agency Legislation for sole traders), Passionfruit shall pay the agreed Specialist Fee to the Specialist's nominated account gross, without deduction for income tax, National Insurance or other employment taxes.

**6.10.** Where applicable law requires Passionfruit to apply withholding (e.g. where IR35 applies and Passionfruit is the fee-payer, or under Agency Legislation for sole traders), Passionfruit shall deduct and account for such taxes as required.

**6.11.** Otherwise, the Specialist (or their intermediary) is solely responsible for their own tax and social security obligations under applicable law.

**6.12.** Where Passionfruit is required by law to assess the employment or tax status of a Specialist (for example, under Agency Legislation for sole traders), Passionfruit shall do so using reasonable care.

**6.13.** Otherwise, where the Client is the end-user under the Off-Payroll Working Rules, the Client is responsible for status assessments under applicable law (e.g. issuing a Status Determination Statement under the UK's Off-Payroll Working Rules), unless an exemption applies.

**6.14.** Where Passionfruit is required by law to act as the "fee-payer" or equivalent (e.g., under Off-Payroll Working Rules when paying the Specialist's intermediary), it shall: (a) deduct and remit any required income tax, social security contributions, or employer levies (including the UK's National Insurance and Apprenticeship Levy, if applicable); and (b) pay the remaining balance of the Specialist Fee to the Specialist's intermediary in accordance with local legal requirements.

**6.15.** For the avoidance of doubt, where the Specialist is a sole trader, Passionfruit shall remain responsible for compliance with any employment status and PAYE obligations under Agency Legislation.

**6.16.** Where the Client does not qualify for an exemption under Off-Payroll Working Rules, the Client is responsible for determining the Specialist's IR35 status and ensuring the correct tax treatment is applied down the supply chain, including providing the SDS to Passionfruit and the Specialist.

**6.17.** If any Client group company (Client Group) Engages a Specialist whom Passionfruit has previously presented, proposed, or supplied in connection with a Project, but does so outside of Passionfruit's contractual framework and without Passionfruit's involvement within 12 months of the end of the most recent SOW involving that Specialist, Passionfruit shall be entitled to invoice the Client for a Transfer Fee.

**6.18.** This applies regardless of whether the engagement is direct or via a third party (including other employment intermediaries, umbrella companies, or recruiters), and whether for a fixed-term or permanent basis.

**6.19.** Transfer Fee means the greater of £20,000 or a fee equal to 20% of the projected first year remuneration/fees to be paid to Specialist.

**6.20.** A Specialist is not considered subject to the Transfer Fee where there is an Existing Professional Relationship.

**6.21.** Existing Professional Relationship means an existing professional relationship between the Client and Specialist where the Client and/or Specialist has a record to the reasonable satisfaction of Passionfruit showing that the Specialist has supplied services to the Client prior to that Specialist's registration with Passionfruit.

**6.22.** If the Client fails to notify Passionfruit within 3 days of the proposed direct engagement subject to clause 6.17, the Client shall be deemed to have agreed to the Transfer Fee and Passionfruit may issue an invoice accordingly.

**6.23.** If the Client wishes to continue working with the Specialist through Passionfruit instead of paying the Transfer Fee, Passionfruit shall make reasonable efforts to facilitate the engagement, subject to the Specialist's availability and agreement.

**6.24.** Platform & Compliance Fee: The Client shall pay Passionfruit a monthly Platform and Compliance Fee of £250 GBP (or its equivalent in the agreed invoicing currency) per active Specialist engagement for the duration of that engagement. This fee covers: (a) the Client's access to the Platform for its authorised Client Users; and (b) the ongoing worker classification compliance coverage described in clause 4.21B, including the cost of the initial assessment and associated insurance coverage. This fee is invoiced monthly in advance and is non-refundable.

**6.25.** Billing and Payment: (a) The Platform and Compliance Fee shall be invoiced by Passionfruit to the Client monthly in advance. (b) Payment is due within 30 days of the date of the invoice and shall be paid in the currency specified on the invoice. (c) The Platform and Compliance Fee is distinct from, and payable in addition to, any Project Fees related to the services of Specialists. The Platform and Compliance Fee shall continue to be payable during any notice period for the termination of a Specialist Supply Contract or the Agreement.

**6.26.** If the Client fails to pay any Platform and Compliance Fee by its due date, Passionfruit reserves the right, without prejudice to any other rights or remedies, to suspend access to the Platform for all Client Users until such outstanding fees are paid in full.

## **7. Credit-based Service Subscriptions**

**7.1. Nature of Credit Subscription:** (a) In addition to engaging Passionfruit for specific Projects on an ad-hoc basis, the Client may opt for a "Credit-Based Service Subscription" ("Credit Subscription"). (b) Under a Credit Subscription, the Client pre-pays a monthly fee to Passionfruit in exchange for a specified number of "Service Credits" ("Credits"). These Credits can then be redeemed by the Client to cover the Project Fees for Specialist Supply Contracts entered into with Passionfruit. (c) This Credit Subscription is for the procurement of Specialist services supplied by Passionfruit and is separate from, and in addition to, any Platform & Compliance Fees.

**7.2. Monthly Credit Purchase and Value:** (a) Clients opting for a Credit Subscription must purchase a minimum of four (4) Credits each month. (b) Each Credit has a fixed redeemable value of a minimum of £500 GBP or its equivalent in the agreed invoicing currency which can be applied towards Project Fees. (c) The minimum monthly subscription fee (for 4 Credits) is therefore £2,000 GBP or its equivalent in the agreed invoicing currency. The Client may elect to purchase more than the minimum number of Credits each month at the rate specified per Credit. (d) Credit Subscription fees shall be invoiced by Passionfruit to the Client monthly in advance and are payable by the Client in accordance with the payment terms specified in clause 6.5(a).

**7.3. Credit Validity and Expiry:** Credits purchased in a given Subscription Month are valid for allocation by the Client to a new Project no later than the last day of the first full Subscription Month following the Subscription Month in which those specific Credits were purchased. If Credits are not allocated to a Project within their applicable validity period, they will automatically expire and shall be forfeited by the Client without any right to refund or future use. The responsibility for tracking Credit balances and their expiry dates rests solely with the Client.

**7.4. Redeeming Credits for Projects:** When the Client wishes to initiate a Project using their accrued Credits, they shall notify Passionfruit. Passionfruit and the Client will then collaborate to define the project requirements and agree upon a Statement of Work (SOW). The Client's unexpired and available Credits will be redeemed against the total Project Fee specified in the SOW. Credits are redeemed as whole units. If the total Project Fee exceeds the value of the Client's available unexpired Credits, the Client will be invoiced for the difference.

**7.5. Specialist Matching for Credit-Funded Projects:** Upon the Client allocating Credits and expressing intent to proceed with a Project, Passionfruit shall propose suitable Specialists from its network. The Client agrees to engage in the specialist matching process in good faith. If, after Passionfruit has proposed three (3) distinct Specialists who reasonably meet the objective criteria outlined in the agreed project brief, the Client does not elect to proceed, and continues to decline suitable specialist matches without providing new, substantive, and objective reasons relating to the agreed project requirements, the credits will be forfeit.

**7.6. Insufficient Credits and Additional Fees:** If the Client wishes to undertake a Project for which the total Project Fee exceeds the value of their currently available and unexpired Credits, the Client must agree to pay these additional fees in accordance with Passionfruit's standard payment terms.

**7.7. Relationship of Credits to Services Delivered:** Credits represent a pre-paid monetary value that can be applied towards the total Project Fee of a Specialist engagement as defined in an SOW.

**7.8. Termination of Credit Subscription:** (a) The Client may terminate their monthly Credit Subscription by providing Passionfruit with written notice at least seven (7) business days prior to the next scheduled monthly subscription payment date. (b) Upon termination, any unexpired and unallocated Credits will remain valid within their original expiry period. No refunds will be issued. (c) Termination of the Credit Subscription does not terminate active Specialist Supply Contracts. (d) If this overall Agreement is terminated by either Party, any ongoing Credit Subscription will also terminate concurrently.

## **8. Records**

**8.1.** For the duration of the Agreement and for a period of six years from the termination or expiry of the Agreement, Passionfruit shall maintain full and accurate records of: (a) the specialist services supplied by Passionfruit under the Agreement; (b) the terms on which it or any subcontractors engage any Specialist; (c) the screening undertaken on any Specialists; and (d) its insurance certificates and details of cover.

## **9. Confidentiality**

**9.1.** Confidential Information means all confidential or proprietary information (however recorded or preserved) that is disclosed or made available in any manner (in writing, orally or by access to computer systems or making available data files or in metadata) whether before or after Platform Acceptance, directly or indirectly, by or on behalf of the disclosing Party (Discloser) to the receiving Party (Recipient) or the Recipient's Representatives.

**9.2.** Confidential Information shall include: (a) any non-public terms agreed between the Parties; (b) information related to Passionfruit Technology; (c) any trade secrets, any confidential commercial, financial or technical information; (d) any information, data or analysis derived from any Confidential Information; and (e) any other information which by its nature qualifies as confidential or proprietary under Applicable Law.

**9.3.** Representatives means a Party's: (a) employees, workers, contractors, directors, officers, agents, outsourcers and sub-contractors; and (b) investors and advisers.

**9.4.** In consideration of Discloser making available the Confidential Information to the Recipient, the Recipient undertakes to the Discloser that it shall: (a) keep the Confidential Information secret and confidential; (b) not use or exploit the Confidential Information in any way, except for or in connection with, the relationship between the Parties under the Agreement; (c) establish and maintain reasonable security measures to provide for the safe custody of, and to prevent unauthorised access to, the Confidential Information; and (d) only make disclosure of the Confidential Information in accordance with clauses 9.5 and 9.6.

**9.5.** The Recipient may disclose the Confidential Information to any of its Representatives that need to know the relevant Confidential Information, provided the Recipient takes appropriate steps to ensure that all its Representatives given access to the Confidential Information are made aware of its confidential nature.

**9.6.** The Recipient may disclose the Confidential Information to the minimum extent required by: (a) any order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or taxation authority of competent jurisdiction; (b) the rules of any listing authority or stock exchange on which its shares are listed; or (c) Applicable Laws.

**9.7.** The obligations set out in clause 9.4 shall not apply, or shall stop applying, to Confidential Information which the Recipient can show to the Discloser's reasonable satisfaction: (a) that it is, or has become generally available to the public other than as a direct or indirect result of the information being disclosed by the Recipient in breach of the Agreement; (b) was already lawfully known to the Recipient before it was disclosed by the Discloser; (c) has been received by the Recipient from a third party source that is not connected with the Discloser and that such source was not under any obligation of confidence; or (d) was independently developed by it without access to or use of any of the Confidential Information.

**9.8.** Nothing in the Agreement shall prevent any person from reporting any reportable offence to the relevant authorities.

**9.9.** If requested by the Discloser at any time, the Recipient shall immediately destroy or return to the Discloser all documents and other records of the Confidential Information.

**9.10.** If the Confidential Information is stored in electronic form, the Recipient shall erase all such Confidential Information from its computer and communications systems and devices used by it (to the extent reasonably technically practicable).

**9.11.** Each Party acknowledges and agrees that the Confidential Information may not be accurate or complete and it makes no warranty or representation concerning the Confidential Information.

**9.12.** Without prejudice to any other rights or remedies, each Party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of clause 9. Accordingly, each Party shall be entitled to the remedies of injunctions, specific performance or other equitable relief.

**9.13.** The Recipient shall be responsible for any unauthorised disclosure or use by its Representatives of the Discloser's Confidential Information, other than if such unauthorised disclosure or use was beyond its reasonable control.

**9.14.** The Client agrees that Passionfruit may include the Client's name in Passionfruit's marketing materials. Passionfruit will follow the Client's brand guidelines.

## 10. Data Protection

**10.1.** Data Protection Laws means the GDPR, the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and any other UK Laws relating to personal data.

**10.2.** GDPR means (a) the European Union General Data Protection Regulation (EU) 2016/679; (b) the GDPR as incorporated into United Kingdom (UK) law by the Data Protection Act 2018 and amended by the Data Protection, Privacy and Electronic Communications (Amendments, etc.) (EU Exit) Regulations 2019; and (c) any other data protection laws or regulations modelled on GDPR under Applicable Laws.

**10.3.** In connection with any personal data processed by Passionfruit in connection with the Platform, Passionfruit shall comply with the Data Protection Laws relevant to the processing.

**10.4.** Passionfruit's privacy policy includes information about Passionfruit's technical and organisational measures to keep personal data secure and a list of Passionfruit's third party processors.

**10.5.** In connection with any personal data processed by the Client in connection with the Platform, the Client shall comply with the Applicable Laws relevant to the processing.

**10.6.** Each Party will take reasonable steps to ensure the reliability, integrity and trustworthiness of its Representatives with access to Shared Personal Data and/or Processor Personal Data.

**10.7.** Where the Client and Passionfruit are independent controllers Clauses 10.8 to 10.10 apply to the sharing of personal data between the Parties as controllers.

**10.8.** Each Party acknowledges that the Party (Data Discloser) will regularly disclose to the other Party (Data Recipient) personal data (Shared Personal Data) in connection with the Client's use of the Platform (Agreed Purposes).

**10.9.** Each Party shall: (a) ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data; (b) give full information to any data subject whose personal data may be processed; (c) process the Shared Personal Data only for the Agreed Purposes; (d) not disclose or allow access to the Shared Personal Data to anyone other than the intended recipients (Permitted Recipients); (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data; (f) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing; and (g) not transfer any personal data received from the Data Discloser outside the UK unless the transferor complies with Data Protection Laws.

**10.10.** Each Party shall assist the other in complying with all applicable requirements of the Data Protection Laws, including: (a) consulting about notices given to data subjects; (b) promptly informing about data subject access requests; (c) providing reasonable assistance in complying with data subject access requests; (d) assisting in responding to requests from data subjects; (e) ensuring compliance with obligations regarding security, breach notifications, impact assessments; (f) notifying the other party without undue delay on becoming aware of any breach; (g) at the written direction of the Data Discloser, deleting or returning Shared Personal Data on termination; (h) using compatible technology for processing; (i) maintaining complete and accurate records; and (j) providing contact details of at least one employee as point of contact.

**10.11.** If Passionfruit processes personal data only as processor for the Client (Processor Personal Data) Passionfruit shall: (a) process Processor Personal Data only on the Client's written instructions; (b) keep the Processor Personal Data confidential; (c) comply with the Client's reasonable instructions; (d) only transfer the Processor Personal Data outside of the United Kingdom with the Client's prior written consent; (e) assist the Client in responding to data subject requests; (f) notify the Client without undue delay on becoming aware of a personal data breach; (g) at the Client's written request, delete or return the Processor Personal Data; and (h) maintain complete and accurate records and allow for audits.



## 11. Warranties

**11.1.** Except as expressly set out in the Agreement, all warranties, representations, conditions and all other terms and conditions of any kind whatsoever implied by Applicable Laws are, to the fullest extent permitted by Applicable Laws, excluded.

**11.2.** In particular, Passionfruit is a UK-based business and makes no warranties whatsoever with respect to any non-UK Laws.

**11.3.** If the Client uses Platform from outside the UK, or uses Specialists located outside the UK, the Client is solely responsible for ensuring that such use is compliant with Applicable Laws outside of the UK.

**11.4.** The Platform is provided on an as is and as available basis.

**11.5.** Each Party warrants and represents that: (a) it has full right, power and authority to agree to the Agreement; and (b) it holds all licences and consents necessary to carry out its obligations under the Agreement.

**11.6.** Passionfruit warrants, represents and undertakes that: (a) it has full right, power and authority (including all applicable licences of Intellectual Property Rights) to provide Platform to the Client as set out in the Agreement; (b) the use of Platform by the Client in accordance with the Agreement does not infringe the Intellectual Property Rights of any third party in the UK; and (c) it is not a managed service company within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

**11.7.** The Client warrants, represents and undertakes that: (a) it shall not provide access to Platform to any person who is not a genuine and permitted Client User; (b) it has full right, power and authority to use any information provided to Passionfruit; (c) the use of Client Uploads does not breach Data Protection Laws or any Applicable Laws; (d) the use of Client Uploads does not conflict with any third party obligations; and (e) it will not use the Platform for any Available Projects which involve vulnerable persons.

## 12. Indemnities

**12.1.** Losses means claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and losses (including all interest, fines, penalties, management time and legal and other professional costs and expenses).

**12.2.** Passionfruit shall indemnify the Client against Losses suffered or incurred by the Client arising out of or in connection with any claim or allegation made by a third party against the Client that use of Platform, as provided by Passionfruit under the Agreement, infringes the Intellectual Property Rights of a third party under UK Law.

**12.3.** The indemnity in clause 12.2 shall not apply to the extent that any claim or allegation results from: (a) the Client's failure to use Platform in accordance with reasonable instructions; (b) the Client's use of Passionfruit Technology in combination with other software or data; (c) Client Uploads; (d) the Client's use of Platform after notice of alleged or actual infringement.

**12.4.** The Client shall indemnify Passionfruit against Losses suffered or incurred by Passionfruit arising out of or in connection with: (a) any claim that Client Uploads infringe Intellectual Property Rights of a third party; (b) any claim that Client Uploads breach Data Protection Laws; and/or (c) use of Passionfruit Technology outside of the scope permitted by the Agreement.

**12.5.** In respect of any claim under the indemnities: (a) the Indemnified Party shall give written notice to the Indemnifying Party; (b) Indemnified Party shall give the Indemnifying Party sole authority to defend or settle; (c) Indemnified Party shall not make any admission without prior written consent; (d) Indemnified Party shall give access to premises, assets, accounts and documents; and (e) take such action as the Indemnifying Party may reasonably request.

**12.6.** Nothing in this clause 12 shall restrict or limit the general obligation at law to mitigate any Losses.

**12.7.** Passionfruit may upon notification of a Claim: (a) disable the Client's use of Platform until satisfied it has the requisite rights; (b) procure the right for the Client to continue using Platform; or (c) replace or modify Platform so that it becomes non-infringing.

## 13. Limitations & Exclusions

**13.1.** The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

**13.2.** Nothing in the Agreement limits any liability: (a) for death or personal injury caused by negligence; (b) for fraud or fraudulent misrepresentation; (c) the Client's obligation to pay the Charges; or (d) anything else which cannot be limited or excluded under Applicable Laws.

**13.3.** Subject to clauses 13.2 and 13.5 each Party's total liability to the other Party under this Agreement and each individual Specialist Supply Contract shall not exceed the following: (a) for a breach of the Client Platform Terms: the greater of £5,000 or 125% x the Passionfruit Fees paid or payable to Passionfruit by the Client under the Client Platform Terms in the 12 months preceding the event giving rise to the claim (General Cap); and/or (b) for a breach of a Specialist Supply Contract (on a per Project/Specialist Supply Contract basis): the greater of £500 or 125% x the Passionfruit Fee for the Project (Project Cap).

**13.4.** The General Cap shall be reduced by any amounts paid under the Project Cap.

**13.5.** Subject to clause 13.2, the following types of loss are excluded: (a) indirect and consequential loss; (b) loss of profits, sales or business, agreements or contracts; (c) anticipated savings; (d) wasted expenditure; (e) loss of use or corruption of software, data or information.

**13.6.** Passionfruit is not responsible to the Client or any third party for a Specialist's day-to-day performance, but remains the contractual supplier responsible for facilitating the specialist engagement.

**13.7.** Any claims under the Agreement by the Client must be brought within one year of the Client or the Client's Representatives becoming aware of the claim.

## 14. Insurance

**14.1.** Each Party shall maintain in force insurance policies with reputable insurance companies, against all risks that would normally be insured against by a prudent businessman in connection with the risks associated with the Agreement and produce to the other Party on demand full particulars of that insurance.

**14.2.** If the Order Form states that the Client will benefit from IR35 insurance, the Client shall comply with, and benefit from, our IR35 policy (IR35 Insurance).

**14.3.** In which case, and notwithstanding any other clause in the Passionfruit Client Terms, the Client's sole and exclusive remedy against Passionfruit for any liability, tax, interest, penalty or expense in connection with an Outside IR35 assignment shall be recovery under the IR35 Insurance policy, save where the liability is caused by Passionfruit's deliberate breach.

## 15. Dispute Resolution

**15.1.** The Parties shall ensure that Passionfruit Contact and the Client Contact shall use their best efforts to negotiate and settle any dispute or difference that may arise out of or relate to the provision of Platform or the supply of Specialist Services under this Agreement before resorting to legal action.

**15.2.** They shall use good faith efforts to resolve their dispute.

**15.3.** This clause shall apply to any and all disputes under the Agreement and any Specialist Supply Contract.

**15.4.** If any such dispute is not resolved through discussion between Passionfruit Contact and the Client Contact within two weeks, the dispute shall be referred to an appropriately senior person at the Client and a member of Passionfruit executive team for further discussion.

**15.5.** If any such dispute is not resolved by those persons within a further three weeks of referral, either Party may ask the other to enter into mediation in good faith to settle such a dispute and shall do so in accordance with the CEDR Model Mediation Procedure.

**15.6.** To initiate the mediation a Party must give notice in writing (ADR Notice) to the other Party, referring the dispute to mediation.

**15.7.** A copy of the referral should be sent to CEDR.

**15.8.** Unless otherwise agreed within 14 days of notice of the dispute to CEDR, the mediator will be nominated by CEDR.

**15.9.** Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR Notice.

**15.10.** The Party submitting the ADR Notice shall pay the costs of the mediator.

**15.11.** If at any time during the processes outlined in this clause 15 the Parties reach agreement on the resolution of the dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, it shall be final and binding.

## **16. Termination**

### **16.1. Client Termination of Services for Convenience:**

(a) Agreement and Platform Access: The Client may terminate this Agreement and its access to the Platform by providing Passionfruit with at least seven (7) business days' written notice, provided that all active Specialist Supply Contracts have been terminated or have expired. Where active Specialist Supply Contracts remain in force, notice to terminate the Agreement shall take effect only upon the termination or expiry of the last active Specialist Supply Contract.

**16.2. Termination of Agreement by Client.** This Agreement shall be considered terminated by the Client: (a) Upon written notice under clause 16.1(a), taking effect as described therein; OR (b) Automatically, if there are no active Specialist Supply Contracts and no new Specialist Supply Contract is entered into within ninety (90) days of the termination or expiry of the last active Specialist Supply Contract, unless the Client has notified Passionfruit in writing of its intention to commence a new engagement within that period.

**16.3. Termination by Passionfruit for Convenience.** Passionfruit may terminate this Agreement at any time for convenience by giving the Client at least 7 days' written notice.

**16.4. Termination for Cause (Material Breach).** Either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if: (a) the other Party commits a material breach which is irremediable or (if remediable) fails to remedy that breach within thirty (30) days after being notified in writing; or (b) the other Party repeatedly breaches any of the terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms.

**16.5. Termination for Insolvency.** Either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if the other Party: (a) becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (b) ceases or threatens to cease to carry on the whole or a substantial part of its business; (c) any distress or execution shall be levied upon its property or assets; (d) shall make or offer to make any voluntary arrangement or composition with its creditors; (e) any resolution to wind up shall be passed or any petition to wind up shall be presented; (f) is the subject of a notice of intention to appoint an administrator or becomes subject to an administration order; (g) a receiver or administrative receiver is appointed; (h) any bankruptcy petition is presented or a bankruptcy order is made; (i) an application is made for a debt relief order; (j) is dissolved or otherwise ceases to exist; or (k) the equivalent of any of these events occurs under Applicable Laws.

**16.6. Consequences of Termination.** (a) All Charges shall become immediately due and payable. (b) Termination shall not affect accrued rights and remedies. (c) On termination: (i) all licences and authorisations will terminate; and (ii) the Client shall promptly return or destroy all Passionfruit Confidential Information. (d) If Passionfruit terminates for convenience, active Specialist Supply Contracts shall continue until the end of the notice period. (e) Following notice of termination, the Client may be given limited, chargeable run-off access to the Platform for up to forty-five (45) days.

## **17. Force Majeure & Delay**

**17.1.** Passionfruit shall not be liable for any breach of the Agreement directly or indirectly caused by circumstances beyond Passionfruit's reasonable control.

**17.2.** The Client acknowledges and agrees that non-performance by any Specialist engaged by Passionfruit is not within the reasonable control of Passionfruit.

**17.3.** If such Specialist becomes unavailable or is otherwise unable to provide their contracted services, this shall not constitute a breach of the Agreement by Passionfruit.

**17.4.** Passionfruit shall use reasonable endeavours to work around the issue and source a replacement Specialist as soon as reasonably practicable, keeping the Client fully and promptly informed.

## **18. Modern Slavery**

**18.1.** In performing their obligations under the Agreement, each Party shall comply with all applicable anti-slavery and human trafficking laws, statutes and regulations including the Modern Slavery Act 2015.

**18.2.** Each Party warrants that at the date of the Agreement it has not been convicted of any offence involving slavery and human trafficking.

**18.3.** Breach of this clause 18 shall be deemed a material breach of the terms of the Agreement which is irreparable.

## **19. Anti-Bribery and Corruption**

**19.1.** Each Party agrees to: (a) comply with Applicable Laws relating to anti-bribery and anti-corruption including the Bribery Act 2010; (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act; and (c) promptly report to the other Party's CEO or Chair any request or demand for any undue financial or other advantage.

**19.2.** Breach of this clause 19 shall be deemed a material breach of the terms of the Agreement which is irreparable.

## **20. Anti-Facilitation of Tax Evasion**

**20.1.** Each Party shall: (a) not engage in any activity, practice or conduct which would constitute a tax evasion facilitation offence under the Criminal Finances Act 2017; (b) have and shall maintain such policies and procedures as are reasonable to prevent the facilitation of tax evasion; and (c) promptly report to the other Party any relevant request or demand received from a third party to facilitate the evasion of tax.

**20.2.** Breach of this clause 20 shall be deemed a material breach of the terms of the Agreement which is irreparable.

## **21. Import Tax, Export & Sanctions**

**21.1.** Each Party shall comply with Applicable Laws relating to import and export and trade sanctions.

## **22. General**

- 22.1.** Headings shall not affect interpretation.
- 22.2.** Interpretation of general words shall not be restricted by words indicating a particular class or particular examples.
- 22.3.** A person includes a natural person, corporate or unincorporated body.
- 22.4.** A reference to a holding company or a subsidiary means a holding company or a subsidiary as defined in section 1159 of the Companies Act 2006.
- 22.5.** A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 22.6.** A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 22.7.** A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 22.8.** Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 22.9.** No variation of the Agreement shall be effective unless it is in writing and signed by or on behalf of each Party.
- 22.10.** Passionfruit may assign, transfer, grant any security interest over or hold on trust any of its rights or obligations under the Agreement or any interest in them.
- 22.11.** Nothing in the Agreement shall prevent Passionfruit from entering into any agreement or arrangement in relation to any fundraising or public offering.
- 22.12.** Passionfruit may engage any third party to perform its obligations under the Agreement, provided that Passionfruit shall remain fully liable to the Client for performance of such obligations.
- 22.13.** The Client shall not, without the written consent of Passionfruit, assign or transfer any of its rights or obligations under the Agreement to any third party which is not a Group Company.
- 22.14.** The Agreement is the entire agreement between the Parties, and replaces all previous agreements and understandings between them, relating to its subject matter.
- 22.15.** Nothing in the Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties.
- 22.16.** Neither Party shall have the authority to bind the other Party or to contract in the name of, or create a liability against, the other Party in any way or for any purpose.
- 22.17.** Unless set out in this Agreement, the Parties do not intend any third party to have the right to enforce any provision of the Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 22.18.** Notices to terminate shall be in writing and delivered by hand or sent by recorded delivery post to the relevant Party at its registered/usual business address.
- 22.19.** Without evidence of earlier receipt, notices are deemed received: (a) if delivered by hand, at the time of delivery; (b) if sent by recorded delivery, at 9.00 am on the second UK business day after posting; and (c) in the case of post, it shall be sufficient to prove that the notice was properly addressed and posted.
- 22.20.** Any other notices and communications under the Agreement may be delivered in writing and/or by email, but not by messaging platforms.
- 22.21.** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.
- 22.22.** If any provision or part-provision of the Agreement is deemed deleted, Passionfruit may replace it with a provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**22.23.** No failure or delay by a Party to exercise any right or remedy shall constitute a waiver of that or any other right or remedy.

**22.24.** No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**22.25.** The rights and remedies expressly conferred by the Agreement are cumulative and additional to any other rights or remedies a Party may have.

**22.26.** Expiry or termination of the Agreement shall not affect either of the Parties' accrued rights or liabilities.

**22.27.** Neither Party may commence any court proceedings in relation to any dispute until it has attempted to settle the dispute by mediation as set out in clause 15.

**22.28.** The Agreement and any non-contractual obligations arising in connection with it are governed by and construed in accordance with English law, and the courts of England and Wales shall have exclusive jurisdiction.

## **Part B: Specialist Supply Terms**

### **1. Introduction**

- 1.1.** Unless terms are specifically defined in these Specialist Supply Terms, they will have the meaning given to them in the Client Platform Terms.
- 1.2.** The Client Platform Terms are incorporated into the Specialist Supply Contract.
- 1.3.** Specialists are independent contractors engaged by Passionfruit, providing professional services to Clients.
- 1.4.** They are not employees, workers, agents, or representatives of Passionfruit or the Client.
- 1.5.** Nothing in these terms shall create an employment, partnership, joint venture, or agency relationship between the Specialist and the Client, or between the Specialist and Passionfruit (other than Passionfruit acting as an employment business for regulatory purposes).
- 1.6.** Each Specialist is engaged on a business-to-business basis and is responsible for their own legal, tax, and regulatory compliance (subject to Passionfruit's obligations regarding sole traders under Agency Legislation and fee-payer obligations under Off-Payroll Working Rules where applicable).
- 1.7.** The Client acknowledges that Specialists are independent contractors and are not entitled to employment-related benefits or protections from the Client.
- 1.8.** The Client agrees not to take any action that could misclassify the relationship, including exerting supervision, direction or control over the Specialist's work in a manner inconsistent with their independent status, or requiring exclusive engagement beyond the agreed SOW.

### **2. Effective Date & Term**

- 2.1.** With effect from the point the Platform records the agreed SOW, Passionfruit and the Client agree to be bound by these Specialist Supply Terms, and a single Specialist Supply Contract is formed directly between Passionfruit and the Client for the Project set out in the SOW.
- 2.2.** (At the same time, a separate single Specialist Contract is formed directly between Specialist and Passionfruit subject to the Specialist Terms.)
- 2.3.** The Client's contractual relationship for the supply of specialist services is with Passionfruit.
- 2.4.** Specialists are independent providers engaged by Passionfruit to provide their professional services on a freelance basis under Passionfruit's contract with the Client.
- 2.5.** The Client acknowledges that its contractual relationship is solely with Passionfruit.
- 2.6.** Specialists are contracted by Passionfruit and may not be engaged by the Client outside of this arrangement unless expressly agreed in writing and subject to applicable transfer provisions (see Part A clause 6).
- 2.7.** The term of the Specialist Supply Contract is the period of the Project as set out in the SOW, subject to any extensions or early termination.

### **3. Specialist Services**

- 3.1.** Passionfruit shall procure that the Specialist shall deliver to the Client: (a) the services described in the SOW; and (b) all other obligations of Specialist set out in these Specialist Supply Terms (Service Commitments).
- 3.2.** Passionfruit shall procure that, in performing obligations under this Specialist Supply Contract, Specialist shall at all times: (a) apply such time, attention and skill as may be necessary for the due and proper performance of the tasks outlined in the SOW to the standard to be expected of a competent and professionally experienced provider; (b) ensure that it does not interfere with the activities of the Client, its employees, agents, suppliers or

customers except as reasonably necessary; (c) ensure that all written information and materials given by Specialist to the Client are or were accurate when given; and (d) comply with all Applicable Laws and Client policies from time to time insofar as they are relevant to the SOW.

**3.3.** Specialist has the unfettered right to substitute/sub-contract the performance of the services assigned in the SOW to any other suitably qualified person, subject to providing prior notification to Passionfruit and the Client where reasonably practicable.

**3.4.** Under the Specialist Contract, Specialist shall ensure such substitute possesses the necessary skills, qualifications and experience to perform the services in line with the agreed scope.

**3.5.** Passionfruit remains contractually responsible to the Client for facilitating access to the Specialist's services under the agreed terms.

**3.6.** The Specialist is responsible for day-to-day delivery, including determining the manner and means of performing the work, consistent with the SOW.

**3.7.** However, Passionfruit remains the Client's sole counterparty under the Specialist Supply Contract.

**3.8.** Under the Specialist Contract, Specialist shall remain liable for all acts and omissions of substitutes/sub-contractors and be responsible for payment of their charges.

**3.9.** Either the Client or Passionfruit may end the supply of services under the Specialist Supply Contract by giving the notice for convenience set out in the SOW.

**3.10.** If Specialist is Materially Unavailable during the Project, the Client shall notify Passionfruit in writing.

**3.11.** Materially Unavailable means that the Specialist has failed to respond to a communication for more than one week without prior notification or reasonable explanation.

**3.12.** Passionfruit and the Client shall assess the reason for the Specialist being Materially Unavailable, acting in good faith.

**3.13.** If there is no reasonable justification for the Specialist being Materially Unavailable, the Client may terminate the Specialist Supply Contract immediately by written notice to Passionfruit.

**3.14.** Deliverable Acceptance: The Client shall have five (5) business days from receipt of each deliverable to notify Passionfruit in writing of any specific objections (the "Acceptance Window"). Objections must identify the particular respects in which the deliverable does not meet the requirements described in the SOW. If no written objection is received within the Acceptance Window, the deliverable shall be deemed accepted. Where a valid objection is raised, the Specialist shall undertake one round of revisions to address the specific points raised, following which the deliverable shall be deemed accepted ("Deemed Acceptance"). Payment for the relevant period becomes due upon Deemed Acceptance. For the avoidance of doubt, general dissatisfaction or subjective preference does not constitute a valid objection.

Where a deliverable remains materially deficient after one round of revisions (meaning it fails to meet specific, objectively verifiable requirements described in Exhibit A in a manner that would be apparent to a reasonable professional in the relevant field) the Client may notify Passionfruit in writing within three (3) business days of receiving the revised deliverable, setting out the specific continuing deficiencies. Passionfruit shall review the notification and, acting reasonably, determine whether to: (a) instruct the Specialist to undertake a further revision to address the identified deficiencies; (b) propose an alternative Specialist to complete the deliverable; or (c) issue a pro-rata credit to the Client for the deficient deliverable. For the avoidance of doubt, this clause applies only where the deliverable is objectively deficient against the requirements; it does not apply to matters of subjective preference, stylistic choice, or general dissatisfaction. If no notification is received within the three (3) business day window, the deliverable shall be deemed accepted.

## **4. Specialist Fees & Passionfruit Fees**

- 4.1.** The Specialist Fees and Passionfruit Fees (together, Project Fees) are set out in the Platform and/or SOW.
- 4.2.** The Client shall deposit the Project Fees in advance in accordance with the timetable set out in the SOW.
- 4.3.** Passionfruit is responsible for paying the Specialist (or their intermediary) for the services rendered.
- 4.4.** The Client's payment obligation is to Passionfruit alone.
- 4.5.** The Client acknowledges that under the Conduct Regulations Passionfruit may not withhold from Specialist any payment due for services rendered because of any failure by the Client to pay the corresponding Project Fees to Passionfruit.
- 4.6.** Passionfruit will release the Project Fees in arrears to Specialist (or their intermediary) and Passionfruit in accordance with the timetable/milestones set out in the SOW.
- 4.7.** Therefore, if the Client fails to pay any Project Fees under clause 4, the Specialist Supply Contract shall terminate with immediate effect.
- 4.8.** If the Specialist Supply Contract is subject to the Off-Payroll Working Rules and the Specialist's engagement is determined to be 'inside IR35', Passionfruit shall procure compliance with the obligations of the fee payer under the Off-Payroll Working Rules, provided the Client has fulfilled its obligations regarding status determination and notification.
- 4.9.** Where the Client qualifies for an exemption from status determination obligations (for example, as a 'small company' under the UK Off-Payroll Working Rules), and the Specialist is operating via a personal service company (PSC), the PSC remains responsible for determining and accounting for its own tax status.
- 4.10.** Where the Client does not qualify for an exemption, the Client shall be responsible for determining the Specialist's IR35 status and providing the SDS to Passionfruit and the Specialist as required by law.
- 4.11.** Passionfruit is not the end-user and does not hold responsibility for status determinations under Chapter 10 ITEPA 2003.
- 4.12.** The Project Fees do not include applicable VAT, which the Client shall pay.
- 4.13.** Passionfruit shall be solely responsible for all other taxes, national insurance or other withholdings or contributions which may be payable out of, or as a result of the receipt of, any Passionfruit Fees.
- 4.14.** Save where withheld under the Off-Payroll Working Rules (where Passionfruit is fee-payer) or Agency Legislation (for sole traders), Specialist (or their intermediary) and not Passionfruit is solely responsible for all other taxes.
- 4.15.** Subject to clause 4.18, Passionfruit shall indemnify the Client against all liability, assessment or claim by HMRC for any National Insurance contributions, income tax or apprenticeship levy where such liability, assessment or claim arises or is made solely in connection with payment by Passionfruit to the Specialist of the Specialist Fee under Agency Legislation (Chapter 7, Part 2 ITEPA 2003) for sole traders.
- 4.16.** This indemnity expressly does not include liability arising under the Off-Payroll Working Rules (Chapter 10, Part 2 ITEPA 2003 or NIC Social Security Contributions (Intermediaries) Regulations 2000) relating to the status of any Specialist engaged via an intermediary (OPW Enquiry); (b) any taxes and interest owed in respect of a PSC Specialist for which HMRC or any court hold the Client accountable following an OPW Enquiry; (c) any penalties for which HMRC hold the Client liable following an OPW Enquiry.
- 4.17.** The indemnity at clause 4.16 shall not apply to the extent that the liability, assessment or claim by HMRC results from (or is increased because of): (a) any act, omission, default, delay, negligence or breach of the Off-Payroll Working Rules by the Client (including a failure to take reasonable care and a failure to comply with the client led disagreement process);

and/or (b) any fraudulent information or document provided by or on behalf of the Client or Affiliates.

**4.18.** The Client shall indemnify Passionfruit against all liability, assessment or claim by HMRC where such liability, assessment or claim arises or is made in connection with: (a) any act, omission, default, delay, negligence or breach of the Off-Payroll Working Rules by the Client; and/or (b) any fraudulent information or document provided by the Client.

**4.19.** Passionfruit and the Client shall co-operate with each other and insurers in relation to any query relating to a PSC Specialist and the Off-Payroll Working Rules.

**4.20.** If the Client receives any communication (written or verbal) from HMRC in connection with the Off-Payroll Working Status of a PSC Specialist, the Client shall inform Passionfruit in writing within five working days.

**4.21.** The Client agrees that any delay may prejudice the response of any applicable insurance.

## **5. Intellectual Property Rights**

**5.1.** Intellectual Property Rights means all vested and future rights of copyright and related rights, design rights, database rights, patents, rights to inventions, trade marks and get-up, domain names, social media assets, applications for and the right to apply for any of the above, moral rights, goodwill, rights in know-how, rights in confidential information, rights in computer software, and any other intellectual or industrial property rights or equivalent forms of protection.

**5.2.** Passionfruit shall procure that the Specialist directly: (a) assigns to Passionfruit all Intellectual Property Rights in any original works created specifically for the Client as part of the delivery of services under the SOW (Deliverables); and (b) grants to the Client a non-exclusive, worldwide, perpetual and irrevocable licence to copy, store, distribute, publish, adapt, edit and otherwise use any Deliverables for any and all purposes whatsoever. Passionfruit hereby assigns to the Client, upon full payment of the applicable Project Fees, all Intellectual Property Rights in the Deliverables assigned to Passionfruit under sub-clause (a) above.

**5.3.** Unless otherwise agreed in writing by the Client, Passionfruit shall procure that Specialist shall ensure that any third party materials incorporated into the Deliverables are licensed to the Client in accordance with the relevant licensor's standard licensing terms.

**5.4.** Before using any third-party materials requiring a licence specific to the Client, Specialist shall seek approval from the Client.

**5.5.** To the maximum extent permitted by applicable laws, Passionfruit shall procure that Specialist shall procure that any individuals involved in the provision of the services have irrevocably and unconditionally waived all moral rights in respect of any Deliverables.

**5.6.** Passionfruit shall procure that Specialist will use reasonable endeavours to do or procure the doing of all acts and execute or procure the execution of all documents that the Client may reasonably request to perfect or confirm the Client's ownership of the rights assigned.

**5.7.** The Client shall grant to Specialist a non-exclusive, worldwide, revocable licence for the term of the Project to copy, store, adapt, edit and otherwise use any materials provided by or on behalf of the Client as necessary to carry out the SOW.

## **6. Confidential Information**

**6.1.** Confidential Information means all confidential or proprietary information disclosed or made available by or on behalf of the Client to the Specialist.

**6.2.** Confidential Information shall include: (a) details of relationships or arrangements or requirements of the Client; (b) content of the Client intranet; (c) details of the Client's business methods and methodology; (d) information divulged to the Client by any third party in confidence; (e) the identity of any prospective client of the Client; (f) personal information about the Client's directors, employees and other staff; (g) personal information about directors, employees or other staff of the Client's clients; (h) trade secrets; (i) ideas and concepts whether patentable or not; (j) software and source code; and (k) deliverables produced by Specialist prior to assignment under clause 5.2.

**6.3.** Passionfruit shall procure that the Specialist undertakes to the Client that it shall: (a) keep the Confidential Information secret and confidential; (b) not use or exploit it except for the Project; (c) establish and maintain reasonable security measures; and (d) only make disclosure in accordance with clause 6.4.

**6.4.** The Specialist may disclose the Confidential Information to the minimum extent required by any order of any court or regulatory body.

**6.5.** The obligations shall not apply to Confidential Information which: (a) is or has become generally available to the public; (b) was already lawfully known to the Specialist; (c) has been received from a third party source; or (d) was independently developed.

**6.6.** Nothing in this Specialist Supply Contract shall prevent any person from reporting any reportable offence to the relevant authorities.

**6.7.** If requested by the Client, Passionfruit shall procure that the Specialist shall immediately destroy or return all documents and other records of the Confidential Information.

**6.8.** If stored in electronic form, the Specialist shall erase all such Confidential Information from its systems.

**6.9.** Specialist acknowledges and agrees that damages alone would not be an adequate remedy for any breach of this clause 6.

**6.10.** The Specialist shall be responsible for any unauthorised disclosure or use by its Representatives.

## **7. Data Protection**

**7.1.** Data Protection Laws means the GDPR, the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC and the Privacy and Electronic Communications Regulations 2003 and any other UK Laws relating to personal data.

**7.2.** GDPR means (a) the European Union General Data Protection Regulation (EU) 2016/679; (b) the GDPR as incorporated into United Kingdom (UK) law by the Data Protection Act 2018; and (c) any other data protection laws or regulations modelled on GDPR under Applicable Laws.

**7.3.** Passionfruit shall procure that Specialist acknowledges that for the purposes of the Data Protection Laws, the Client is the controller and Specialist is a processor in respect of personal data processed by the Specialist on behalf of the Client in connection with the SOW.

**7.4.** To the extent Specialist processes personal data on behalf of the Client, the subject matter and the duration of the processing are as set out in the SOW.

**7.5.** The nature and purpose of the processing are as set out in the SOW.

**7.6.** The type of personal data being processed is as set out in the SOW or otherwise determined by the Client, and which may include: prospects, customers, business partners and vendors of the Client; employees or contacts of the Client's prospects, customers, business partners and vendors; employees, agents, advisers and freelancers of the Client.

**7.7.** The rights and obligations of the Client in connection with the data processing activities are as set out in the SOW and this Specialist Supply Contract.

**7.8.** Passionfruit shall procure that Specialist shall, in relation to any personal data processed in relation to the SOW (Project Personal Data): (a) process that Project Personal Data only on written instructions of the Client; (b) keep Project Personal Data confidential; (c) comply with the Client's reasonable instructions; (d) not transfer any Project Personal Data outside of the UK without the Client's prior written consent; (e) assist the Client in responding to any data subject access request; (f) notify the Client without undue delay on becoming aware of a Project Personal Data breach; (g) at the written request of the Client, delete or return Project Personal Data; and (h) maintain complete and accurate records and allow for audits.

**7.9.** Passionfruit shall procure that Specialist shall ensure that it has in place appropriate technical or organisational measures to protect against unauthorised or unlawful processing of Personal Data.