

Passionfruit Specialist Terms

Rules of the Road

There is a lot of small print below for the lawyers (masochists) 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 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 take client payments up front for each month of the project and release it for the specialist's services at the end of the following month. After this payment is made monthly on the last day of the 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 everyone to stay "on platform". That said, if you try to go around us, 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 1a Nelson Terrace, London N1 8DG. VAT number 374633676. Passionfruit is a United Kingdom (**UK**) based employment agency and employment business for the purposes of the *Conduct of Employment Agencies and Passionfruit Regulations 2003* (**Conduct Regulations**) and regulated by the UK's *Employment Agency Standards Inspectorate*.

Specialist means the named individual with specialist skills approved by Passionfruit to use the services available at usepassionfruit.com (**Platform**).

Specialists provide services to their clients through a variety of models entirely at their discretion, including as sole traders (**Sole Traders**), via so-called personal services companies (**PSCs**), or as employees of umbrella companies or consultancies (**Employers**).

In these terms and conditions each of Passionfruit and the Sole Trader Specialist is a **Party** and together they are the **Parties**. If the Specialist operates via a PSC, the PSC is the other Party; if the Specialist operates via an Employer, the Employer is the other Party. With respect to any reference to a Specialist in these terms and conditions, this is an obligation on the PSC or Employer, as the context requires, to comply with these terms and conditions, including to ensure the compliance by the Specialist with these terms and conditions. Separately to this each individual Specialist supplied by a PSC or Employer undertakes directly to Passionfruit not to cause the PSC or Employer to be in breach of these terms and conditions.

Businesses and other organisations (**Clients**) use the Platform to find Specialists and manage contracts and payments. Specialists use the Platform to manage contracts and receive payments from Passionfruit/Clients. Passionfruit provides information to Clients which identifies a Specialist via the Platform or via the *Platform Success Team* (**Introduce**). Specialists Introduced by Passionfruit provide their services under a contract for professional services and determine their own fees for their services (**Specialist Fees**). Clients on Platform are clients of the Specialists and therefore Passionfruit does not operate as a temporary worker agency for the purposes of the *Agency Workers Regulations 2010* (**AWRs**).

Specialists are under no obligation to consider or agree to provide their services for any potential project submitted by Clients (**Available Project**). Clients are under no obligation to accept the services of any Specialists responding to Available Projects. Whilst Passionfruit's *Platform Success Team* may support Specialist's use of Platform and documenting what is agreed between Clients and Specialists, Passionfruit has no day-to-day control over Clients' and Specialists' decisions, including the types of projects available, the services provided and rates charged by Specialists, or any other arrangements for projects (such as when, where and how the Available Project is delivered (**Project**) to Client by Specialist). These are practical matters agreed directly between Clients and Specialists which are documented in a statement of work saved on the Platform (**SOW**). The SOW also records if the Specialist (if incorporated) has opted out of the *Conduct Regulations*.

Sign up to use Platform at usepassionfruit.com/specialist-signup.

By submitting a request to use Platform, user expressly confirms to Passionfruit:

- That user has read and agrees to Passionfruit's terms and conditions and will comply with them.
- That if user operates via a PSC or has an Employer, that user has provided a copy of these terms and conditions to

the PSC or Employer (Employer must confirm this during onboarding).

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

Sole Traders/PSCs/Employers will be bound by these terms and conditions (as updated and published by Passionfruit from time to time at usepassionfruit.com/terms) for so long as Specialist has a user login to Platform.

Passionfruit will consider each request to use Platform and determine which potential freelancers to register as Specialists. If Passionfruit accepts a freelancer as a Specialist, Passionfruit will confirm this to Specialist by notifying Specialist by email, which is **Platform Acceptance**.

With effect from the point of Platform Acceptance the Sole Trader/PSC/Employer agrees to be bound by the Passionfruit Specialist Terms below. An agreement between the Parties subject to the Passionfruit Specialist Terms shall be in place from Platform Acceptance until termination under the Passionfruit Specialist Terms (Agreement).

The **Passionfruit Specialist Terms** comprise:

Part A: Specialist Platform Terms – these apply between Passionfruit and Sole Trader/PSC/Employer and govern how Specialist uses Platform and the relationship between Passionfruit and Sole Trader/PSC/Employer generally.

Part B: Specialist Engagement Terms – these apply between Passionfruit and Sole Trader/PSC/Employer when Passionfruit Introduces and supplies the services of a Specialist. For each Project that Passionfruit introduces and supplies the Specialist for, a separate **Specialist Engagement Contract** is formed between Passionfruit and Sole Trader/PSC/Employer under the Specialist Engagement Terms when the SOW is agreed.

Part C: Marketplace Terms – these apply between Client and Sole Trader/PSC/Employer when Passionfruit only Introduces the Specialist for an Available Project. For each Available Project that Passionfruit only introduces the Specialist for, a separate **Marketplace Contract** is formed between Client and Sole Trader/PSC/Employer under the Marketplace Terms, when the SOW is agreed.

The Passionfruit Specialist Terms were last updated on 14 January 2023. For any questions, please contact support@usepassionfruit.com.

Part A: Specialist Platform Terms

1. ONBOARDING

- 1.1 At Platform Acceptance Passionfruit will begin the process of onboarding Specialist (**Onboarding**).
- 1.2 Specialist shall provide all information requested by Passionfruit for Onboarding, including for the purposes of 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> (**Off-Payroll Working Rules**). In particular Specialist shall disclose if they meet one of A, B or C described here for the purpose of assessing whether they operate via a PSC for the purposes of the Off-Payroll Working Rules: <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10003> (**PSC Specialist**).
- 1.3 The Specialist shall ensure that all information provided to Passionfruit at any time does not contain any material which could be regarded as offensive, indecent, obscene, illegal, dishonest, untruthful, defamatory, or discriminatory.
- 1.4 Specialist shall keep all logins to Platform (**User Credentials**) secret and secure and not allow any person to share any logins. Specialist is responsible for all use of Platform under their User Credentials.
- 1.5 Employer may not use the Specialist's User Credentials. If an Employer requires access to the Platform for any reason, this is subject to Passionfruit's approval and any applicable access limitations applicable to Employers.
- 1.6 When Onboarding is complete Specialist will be available on Passionfruit's marketplace (**Marketplace**) for Passionfruit to match to Client requests.
- 1.7 Specialist must ask their Employer to provide Passionfruit with confirmation in writing that the Employer agrees to be bound by the Passionfruit Specialist Terms. If confirmation is not provided, Onboarding cannot be completed, and Specialist will not be added to the Marketplace.

2. USING THE SERVICES

- 2.1 Specialist shall in their use of Passionfruit's services (**Services**): (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 Specialist to use Platform, be matched to Clients for Available Projects, and carry out Projects (including providing information and completing assessments 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) Specialist'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 Passionfruit (including other Specialists and Clients) to be in breach of Applicable Law or suffer reputational damage.

- 2.2 Under the Passionfruit Client Terms, Clients are obliged, within reason given the nature of the Project, to allow Specialist to determine where, when, and how the Specialist delivers the Project*. Clients are also obliged to: (a) not by any act or omission subject the Specialist to Client's supervision, direction or control as interpreted by Applicable Law relating to tax (subject to these two exceptions: (i) when delivering an *Inside IR35* Project in compliance with the Off-Payroll Working Rules or (ii) being a Specialist who receives all their income from the Project on a PAYE basis via an Employer not connected to Specialist); or (b) not by any act or omission manage the delivery of any services being delivered by the Specialist in such a manner as to cause Specialist to be employed as interpreted by Applicable Law relating to tax. Clients are also obliged to: (a) not do anything or act in any way which may result in any Specialist: (i) being treated as any employee or worker of 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 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. (* Sole Trader Specialists will be required to complete an SDC assessment; PSC Specialists providing services to Clients subject to the Off-Payroll Rules will be required to undertake IR35 assessment. The outcomes of these assessments may determine how Specialist contracts with Passionfruit for a particular Available Project).
- 2.3 Taking into account the obligations placed on Clients under the Passionfruit Client Terms, Specialist shall: (a) not by any act or omission allow themselves to become subject to Client's supervision, direction or control (subject to these two exceptions: (i) when delivering an *Inside IR35* Project in compliance with the Off-Payroll Working Rules or (ii) being a Specialist who receives all their income from the Project on a PAYE basis via an Employer not connected to Specialist); or (b) not by any act or omission deliver of any services being delivered by the Specialist in such a manner as to cause Specialist to be employed as interpreted by Applicable Law relating to tax. Specialist 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 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 Client; (b) not knowingly or recklessly do, or omit to do, anything which may cause a Client to be in breach of Applicable Law or suffer reputational damage; (c) treat Client staff 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 Client staff.
- 2.4 Unless agreed differently between Client and Specialist, Available Projects are presented to Specialists as being engaged on a month-by-month basis (**Project Month**) subject to a standard two week notice period before the end of a Project Month. If Client requires a different period for an Available Assignment, Client shall inform Passionfruit.

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, trade marks and get-up (and goodwill attaching to those trade marks 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 Specialist Platform Terms shall transfer the Intellectual Property Rights of Passionfruit or its licensors to Specialist/PSC/Employer 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**). The underlying code and databases of Platform are trade secrets.
- 3.4 Passionfruit shall use reasonable skill and care to keep the Passionfruit Technology operational.
- 3.5 Passionfruit keeps users of Platform informed of any scheduled outages for maintenance. 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. During any outage Clients can still engage Specialist manually using the support of the *Platform Success Team*.
- 3.6 The Passionfruit name, Passionfruit logo and any other Passionfruit trade marks, service marks and brand properties (such as domain names and social media assets) used in connection with Passionfruit or Platform are trade marks and

registered trade marks of Passionfruit (**Passionfruit Marks**). Other than as necessary to use Platform in accordance with Specialist Platform Terms, Specialist is not granted any rights or licences in Passionfruit Marks.

- 3.7 Subject to Specialist's compliance with Specialist Platform Terms, Passionfruit grants Specialist 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 Specialist to use the Platform for its intended purpose.
- 3.8 Specialist 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 Specialist or on Specialist's behalf by any other person (**Specialist Uploads**) in connection with Passionfruit providing Platform to Specialist.
- 3.9 In addition to the licence in clause 3.8 Specialist grants Passionfruit a perpetual right to use Specialist Uploads solely for Passionfruit's lawful business purposes, expressly including: (a) providing compliance related Specialist 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.
- 3.10 Where Platform provides functionality for Specialist to download any contracts, compliance documents or other information (**Specialist Downloads**), Passionfruit grants Specialist a perpetual right to use Specialist Downloads solely for lawful internal business purposes: (a) providing compliance related Specialist Downloads to the intended recipients under Applicable Law; (b) documenting Specialist's compliance with Applicable Law (including for internal and external audit); (c) obtaining advice from Specialist's legal, tax and accountancy advisers; and (d) evidencing Specialist's compliance with Applicable Law to any person charged with a regulatory function under Applicable Law. A Specialist may provide copies of Specialist Downloads to Employer subject to the same limitations on use.
- 3.11 Unless required by Applicable Law, Specialist may not sub-licence Passionfruit Technology (including User Materials and Specialist Downloads) to any third party outside of the scope of the licences in clause 3.
- 3.12 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.
- 3.13 To the extent Specialist provides any suggestions, comments or other feedback related to the Services (**Feedback**) Specialist 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.
- 3.14 Except as expressly permitted by Passionfruit under Specialist Platform Terms, Specialist shall not: (a) otherwise use, copy, modify, adapt or create derivative works of any Passionfruit Technology or Specialist 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 Specialist Downloads into any other product or service; (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 on SOWs and/or as part of any Specialist 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 Specialist Downloads, or permit Platform or Specialist Downloads to be used, for the benefit or on behalf of any third party.
- 3.15 Each Party shall use good industry practice to ensure that no Malicious Item is connected to, ingested into, transmitted through, or stored on, Platform. **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 engagement and supply of Specialist to carry out Projects for Clients.
- 4.2 Before Passionfruit supplies Specialist to Client, it will provide the following information to Specialist 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 services the Client seeks to have performed by Specialist; (c) an overview of the Available Project the Client wishes to engage Passionfruit to supply 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) days and hours the Specialist will provide their services for the Available Project; (g) details of any potential health and safety risks associated with the Available Project and what steps Client has taken to prevent, mitigate or control these risks; (h) details of any experience, training, qualifications or authorisations the Specialist must have for the Available Project, including as required by Client, any professional body or Applicable Law; (i) the minimum amount of fees and other benefits the Specialist can charge during the Available Project; (j) details of any expenses which might be payable to or by the Specialist; (k) the frequency Passionfruit will pay Specialist; and (l) the length of notice the Specialist or Client would need to give to terminate the Available Project early.

- 4.3 Passionfruit shall Introduce Specialist to Clients based on the criteria provided by Client and obtain confirmation that Specialist has an interest in the Available Project for which Passionfruit wishes to Introduce them.
- 4.4 Passionfruit cannot guarantee to find an Available Project for Specialist and gives no warranties as to the suitability of any Available Project it Introduces and/or supplies the Specialist for.
- 4.5 If Client is subject to the Off-Payroll Working Rules, Client is responsible for complying with the applicable obligations under the Off-Payroll Working Rules using reasonable care as set out at <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10014>, including in: (a) carrying out a status assessment on the Specialist and providing the *Status Determination Statement* to Passionfruit and Specialist as a pdf before agreeing the SOW; and (b) having in place and correctly following a *Client Led Disagreement Process*. Client is the deemed employer. Specialist shall promptly respond to any queries relating to Off-Payroll Working Rules and ensure all responses are accurate and complete (and Specialist shall comply with any terms and conditions applicable to Client's choice of assessment tool). If Client is not subject to the Off-Payroll Working Rules, PSC Specialist shall self-assess.
- 4.6 Client is also responsible for all right to work checks which it may require under the *Immigration Asylum and Nationality Act 2006*, the *Immigration Act 2016*, and other Applicable Law regarding the reporting of labour movements, concealed employment and the employment of foreign workers. Specialist shall provide all information and documents requested.
- 4.7 With effect from the point the Platform records the agreed SOW, Passionfruit and Specialist agree to be bound by the Specialist Engagement Terms at Part B, and a single Specialist Engagement Contract is formed directly between Passionfruit and Client for the Project set out in the SOW. (At the same time, a separate single *Specialist Supply Contract* is formed directly between Client and Passionfruit subject to separate *Specialist Supply Terms*.)
- 4.8 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 has an obligation under the *Conduct Regulations* to inform Client and (unless Client reasonably requests otherwise) Passionfruit is required to give immediate notice to Client to terminate the corresponding agreement between Client and Passionfruit (*Client Supply Contract*).

5. WHEN PASSIONFRUIT ACTS AS AN EMPLOYMENT AGENCY

- 5.1 For the purposes of the *Conduct Regulations*, Passionfruit acts as an employment agency in relation to the Introduction (but not engagement and supply) of Specialist to Client for a Project.
- 5.2 Before Passionfruit Introduces Specialist to Client, it will provide the following information to Specialist 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 services the Client seeks to have performed by Specialist; (c) an overview of the Available Project the Client wishes to engage 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) days and hours the Specialist will provide their services for the Available Project; (g) details of any potential health and safety risks associated with the Available Project and what steps Client has taken to prevent, mitigate or control these risks; (h) details of any experience, training, qualifications or authorisations the Specialist must have for the Available Project, including as required by Client, any professional body or Applicable Law; (i) the minimum amount of fees and other benefits the Specialist can charge during the Available Project; (j) details of any expenses which might be payable to or by the Specialist; (k) the frequency Client will pay Specialist; and (l) the length of notice the Specialist or Client would need to give to terminate the Available Project early.
- 5.3 Passionfruit shall Introduce Specialist to Clients based on the criteria provided by Client and obtain confirmation that Specialist has an interest in the Available Project for which Passionfruit wishes to Introduce them.
- 5.4 Passionfruit cannot guarantee to find an Available Project for Specialist and gives no warranties as to the suitability of any Available Project it Introduces the Specialist for.
- 5.5 If Client is subject to the Off-Payroll Working Rules, Client is responsible for complying with the applicable obligations under the Off-Payroll Working Rules using reasonable care as set out at <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10014>, including in: (a) carrying out a status assessment on the Specialist and providing the *Status Determination Statement* to Passionfruit and Specialist as a pdf before agreeing the SOW; and (b) having in place and correctly following a *Client Led Disagreement Process*. Client is both the deemed employer and fee payer. If Client is not subject to the Off-Payroll Working Rules, PSC Specialist shall self-assess.

- 5.6 Client is responsible for all right to work checks which it may require under the *Immigration Asylum and Nationality Act 2006*, the *Immigration Act 2016*, and other Applicable Law regarding the reporting of labour movements, concealed employment and the employment of foreign workers. Specialist shall provide all information and documents requested.
- 5.7 With effect from the point the Platform records the agreed SOW, Client agrees to be bound by the Marketplace Terms at Part C, and a single Marketplace Contract is formed directly between Client and Specialist for the Project set out in the SOW.
- 5.8 Passionfruit is not a party to the Marketplace Contract, but Specialist authorises Passionfruit as its commercial agent to promote Specialist to Clients, to conclude the SOW under the Marketplace Contract, and to receive payment of the Specialist Fees on Specialist's behalf. In this limited capacity, Passionfruit is neither the buyer or the seller of the Project Services. Passionfruit is not the Specialist's legal agent for any purpose. Specialist is the supplier of record for the Project Services, but Client pays payment partner for the Project Services. Client's obligation to pay for the Project Services is satisfied when Client properly pays the applicable Specialist Fee via the payment partner. Because Passionfruit concludes the SOW on behalf of the Specialist, and Client's payment to payment partner satisfies Client's obligation to pay for the Project Services, Passionfruit's name may appear on invoices/card statements (which may also display Specialist's name). Client may only pay for Project Services via the payment partner and the Specialist shall not invoice Client outside of the Platform. Except as otherwise expressly provided in this Marketplace Contract, Passionfruit is not the agent, intermediary or other representative of the Specialist.
- 5.9 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 has an obligation under the *Conduct Regulations* to inform Client.

6. SPECIALIST FEES & TAXES

- 6.1 Specialist Fees are set out in the SOW. Specialist Fees do not include value added tax or any tax of a similar nature applicable to payment of the Specialist Fees (**VAT**). Specialist Fees are payable in the currency indicated in the SOW (GBP/USD/EUR). Specialist is responsible for any exchange rate fees and risk it incurs.
- 6.2 If Passionfruit fails to pay in full on the due date any amount payable by it 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 1% per annum above the base rate of the Bank of England.
- 6.3 Unless required by the Off-Payroll Working Rules for a particular Specialist Engagement Contract (see clause 6.4), payment of the Specialist Fee to Specialist via Passionfruit is not subject to any withholding for National Insurance, income tax or other liability to taxation. This is the obligation of the Specialist under Applicable Law.
- 6.4 If Client is subject to the Off-Payroll Working Rules: (a) if the working practices of the Project/PSC Specialist are assessed by Client as *Inside IR35*, then Passionfruit will procure deductions and payments to HMRC in accordance with the Off-Payroll Working Rules (and (i) Specialist shall reduce the Specialist Fee charged to Passionfruit to take account of the Employer's National Insurance and Apprenticeship Levy obligations and processing fees of the fee payer; and (ii) Passionfruit will procure the PAYE deductions from the Specialist Fee by the fee payer and account to HMRC); or (b) if the working practices of the Project/PSC Specialist are assessed by Client as *Outside IR35*, then the PSC Specialist will be paid without any withholding for National Insurance, income tax or other liability to taxation.
- 6.5 Passionfruit is legally required to report any gross payments to Specialist to HMRC. See <https://www.gov.uk/government/publications/employment-intermediaries-reporting-requirements>.

7. CONFIDENTIALITY

- 7.1 **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. Confidential Information shall include: (a) any non-public terms agreed between the Parties; (b) information related to Passionfruit Technology (including design, look and feel, functionality, underlying code and databases and development plans/roadmap); (c) any trade secrets, any confidential commercial, financial or technical information, including methodologies, processes, procedures, systems or techniques; (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.
- 7.2 **Representatives** means a Party's: (a) employees, workers, contractors, directors, officers, agents, outsourcers, and sub-contractors; and (b) investors and advisers.
- 7.3 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 disclosed to it at least to the standards that it would adopt for its own Confidential Information; and (d) only make disclosure of the Confidential Information in accordance with clauses 7.4 and 7.5. Any other disclosure can only be made with the Discloser's prior written consent.

- 7.4 The Recipient may disclose the Confidential Information to any of its Representatives and 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, and that they are bound by restrictions no less onerous than those placed on it by the Agreement.
- 7.5 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.
- 7.6 The obligations set out in clause 7.3 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 in respect of that information; or (d) was independently developed by it without access to or use of any of the Confidential Information (whether in unaided retained memory or otherwise).
- 7.7 Nothing in the Agreement shall prevent any person from reporting any reportable offence to the relevant authorities.
- 7.8 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 that have been supplied to or generated by the Recipient. 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).
- 7.9 Each Party acknowledges and agrees that the Confidential Information may not be accurate or complete and it makes no warranty or representation (whether express or implied) concerning the Confidential Information, or its accuracy or completeness.
- 7.10 Without prejudice to any other rights or remedies that each Party may have, each Party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this clause 7 by the other Party. Accordingly, each Party shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this clause 7.
- 7.11 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.

8. DATA PROTECTION

- 8.1 **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.
- 8.2 **GDPR** means (a) the *European Union General Data Protection Regulation (EU) 2016/679* on data protection and privacy for all individuals within the European Union (**EU**) and the European Economic Area; (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* (each as amended, superseded, or replaced); and (c) any other data protection laws or regulations modelled on GDPR under Applicable Laws.
- 8.3 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. 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.
- 8.4 Specialist warrants and represents that: (a) Specialist (if required by Data Protection Laws) has paid the data protection fee at <https://ico.org.uk/for-organisations/data-protection-fee/>; (b) Specialist has assessed their level of obligations under Data Protection Laws (which as a minimum has involved the assessment at <https://ico.org.uk/for-organisations/data-protection-self-assessment/assessment-for-small-business-owners-and-sole-traders/> or an equivalent assessment) and is compliant with the requirements under Data Protection Laws (or any Local Law equivalent); and (c) has in place the necessary measures to ensure ongoing compliance with Data Protection Laws (and any Local Law equivalent).
- 8.5 In connection with any personal data processed by Specialist in connection with the Platform, Specialist shall comply with the Applicable Laws relevant to the processing.
- 8.6 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 (each as defined below).
- Where Specialist and Passionfruit are independent controllers*
- 8.7 Clauses 8.6 to 8.9 apply to the sharing of personal data between the Parties as controllers.

- 8.8 Each Party acknowledges that it (**Data Discloser**) will regularly disclose to the other Party (**Data Recipient**) personal data (**Shared Personal Data**) in connection with the Specialist's use of the Platform (**Agreed Purposes**).
- 8.9 Each Party shall: (a) ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes; (b) give full information to any data subject whose personal data may be processed in connection with the Platform; (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 in the context of the Platform and each Party's internal business purposes (**Permitted Recipients**); (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by the Agreement; (f) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and (g) not transfer any personal data received from the Data Discloser outside the UK unless the transferor complies with Data Protection Laws.
- 8.10 Each Party shall assist the other in complying with all applicable requirements of the Data Protection Laws. In particular, each Party shall: (a) consult with the other Party about any notices given to data subjects in relation to the Shared Personal Data; (b) promptly inform the other Party about the receipt of any data subject access request; (c) provide the other Party with reasonable assistance in complying with any data subject access request; (d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible; (e) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities; (f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Laws; (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of the Agreement unless required by law to store the personal data; (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers; (i) maintain complete and accurate records and information to demonstrate its compliance with clauses 8.8 and 8.9; and (j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Laws.

Where Passionfruit is a processor for Specialist

- 8.11 If Passionfruit processes personal data only as processor for Specialist (**Processor Personal Data**) Passionfruit shall: (a) process Processor Personal Data only on Specialist's written instructions; (b) keep the Processor Personal Data confidential; (c) comply with Specialist's reasonable instructions with respect to processing Processor Personal Data (which are as required by Passionfruit to administer the Marketplace Contract); (d) only transfer the Processor Personal Data outside of the United Kingdom with Specialist's prior written consent (which is hereby given unless stated otherwise in the Marketplace Contract; Passionfruit will comply with UK Data Protection Laws with respect to any international transfer of Processor Personal Data); (e) assist the Specialist at Specialist's cost in responding to any data subject request and to ensure compliance with its obligations under the UK Data Protection Laws with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators; (f) notify Specialist without undue delay on becoming aware of a personal data breach of the Processor Personal Data; (g) at Specialist's written request, delete or return the Processor Personal Data and any copies of the Processor Personal Data (unless required by any applicable law to store the Processor Personal Data); and (h) maintain complete and accurate records and information to demonstrate compliance with this clause 8.10 and (subject to conflict of interest clearances) allow for audits by Specialist's designated auditor.

9. WARRANTIES

- 9.1 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. In particular, Passionfruit is a UK-based business and makes no warranties whatsoever with respect to any non-UK Laws. If Specialist uses Platform from outside the UK, or agrees SOWs with Clients located outside the UK, Specialist is solely responsible for ensuring that such use is compliant with Applicable Laws outside of the UK. The Platform is provided on an as is and as available basis.
- 9.2 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.
- 9.3 Specialist warrants, represents and undertakes that: (a) it shall not provide access to Platform to any third party unless authorised by Passionfruit; (b) the use of Specialist Uploads in connection with Platform does not breach Data Protection Laws or any Applicable Laws governing confidential, secret or classified information; and (d) the use of Specialist Uploads in connection with Platform does not conflict with any third party obligations to which Specialist is subject (including any contractual obligations with third parties).

10. INDEMNITIES

- 10.1 **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).
- 10.2 Passionfruit shall indemnify Specialist against Losses suffered or incurred by Specialist arising out of or in connection with any claim or allegation made by a third party against Specialist that use of Platform, as provided by Passionfruit under the Agreement, infringes the Intellectual Property Rights of a third party under UK Law.
- 10.3 The indemnity in clause 10.2 shall not apply to the extent that any claim or allegation results from: (a) Specialist's failure to use Platform in accordance with the reasonable instructions of Passionfruit; (b) Specialist's use of Passionfruit Technology in combination with other software or data outside the ordinary functionality of the Platform; (c) Specialist Uploads; (d) Specialist's use of Platform after notice of the alleged or actual infringement.
- 10.4 Specialist shall indemnify Passionfruit against Losses suffered or incurred by Passionfruit arising out of or in connection with a breach of this Agreement.
- 10.5 In respect of any claim under the indemnities (**Claim**): (a) as soon as reasonably practicable, the indemnified Party (**Indemnified Party**) shall give written notice of the Claim to the indemnifying Party (**Indemnifying Party**), specifying the nature of Claim in reasonable detail; (b) (unless requested otherwise by Passionfruit or insurers, or a regulatory reason would prevent it from doing so, for example Data Protection Laws) Indemnified Party shall give the Indemnifying Party sole authority to defend or settle Claim; (c) Indemnified Party shall not make any admission of liability, agreement or compromise in relation to Claim without the prior written consent of Indemnifying Party (not to be unreasonably conditioned, withheld or delayed); (d) Indemnified Party shall give Indemnifying Party and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its Representatives, and to any relevant assets, accounts, documents and records within the power or control of the Indemnified Party, so as to enable the Indemnifying Party and its professional advisers to examine them and to take copies (at Indemnifying Party's expense) for the purpose of assessing Claim; and (e) at Indemnifying Party's expense take such action as Indemnifying Party may reasonably request to avoid, dispute, compromise or defend the Claim.
- 10.6 Nothing in this clause 10 shall restrict or limit the general obligation at law to mitigate any Losses it may suffer or incur as a result of an event that may give rise to a Claim.
- 10.7 Passionfruit may upon notification of a Claim (or at any time): (a) disable Specialist's use of Platform (in whole or in part depending on the nature of Claim) until such time as Passionfruit is reasonably satisfied that Passionfruit has the requisite rights to provide Platform; (b) procure the right for Specialist to continue using Platform; or (c) replace or modify Platform so that it becomes non-infringing, but if such remedies are not reasonably available to Passionfruit, Passionfruit may withdraw the Platform from use on reasonable notice to Specialist.

11. LIMITATIONS & EXCLUSIONS

- 11.1 The restrictions on liability in this clause 11 apply to every liability arising under or in connection with the Agreement, and all Specialist Engagement Contracts, including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.2 Nothing in the Agreement limits any liability: (a) for death or personal injury caused by negligence; (b) for fraud or fraudulent misrepresentation (including provision of fraudulent documents by a PSC Specialist: <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10023>); (c) Passionfruit's obligation to pay the Specialist Fees in accordance with the *Conduct Regulations* under the Specialist Engagement Terms; or (d) anything else which cannot be limited or excluded under Applicable Laws.
- 11.3 Subject to clauses 11.2 and 11.4 each Party's total liability to the other Party under this Agreement and each individual Specialist Engagement Contract shall not exceed the following: (a) for a breach of the Specialist Platform Terms: the greater of £1000 or 100% x the Specialist Fees paid or payable to Specialist by Passionfruit under the Specialist Platform Terms in the 6 months preceding the event giving rise to the claim (**General Cap**); and/or (b) for a breach of a Specialist Engagement Contract (on a per Project/Specialist Engagement Contract basis): the greater of £500 or 100% x the Specialist Fee for the Project (**Project Cap**). The General Cap shall be reduced by any amounts paid under the Project Cap.
- 11.4 Subject to clause 11.2, all indirect and consequential loss are excluded. Subject to clause 11.2, the following types of loss are excluded by Passionfruit: (a) loss of profits, sales or business, agreements or contracts; (b) anticipated savings; (c) wasted expenditure; and/or (d) loss of use or corruption of software, data or information.
- 11.5 Any claims under the Agreement by Specialist must be brought within one year of Specialist becoming aware of the claim.

12. INSURANCE

- 12.1 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.

- 12.2 Specialist, as a professional freelancer, is responsible for the quality and legality of services to Clients. As a minimum, Specialist's insurance should cover negligence/breach of duty of care, infringement of intellectual property rights and breach of confidentiality, privacy and data protection.

13. DISPUTE RESOLUTION

- 13.1 This clause 13 shall apply to any and all disputes between Passionfruit and Specialist under the Agreement and any Specialist Engagement Contract. Either Party may formally initial a dispute in writing referencing this clause. From that point Passionfruit and Specialist shall use good faith efforts to resolve their dispute.
- 13.2 If any dispute or difference is not resolved within four weeks of being initiated under this clause, 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*.
- 13.3 To initiate the mediation a Party must give notice in writing (**ADR Notice**) to the other Party, referring the dispute to mediation. A copy of the referral should be sent to CEDR. Unless otherwise agreed within 14 days of notice of the dispute to CEDR, the mediator will be nominated by CEDR. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR Notice. The Party submitting the ADR Notice shall pay the costs of the mediator.
- 13.4 If at any time during the processes outlined in this clause 13 the Parties reach agreement on the resolution of the dispute or difference, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, it shall be final and binding on the Parties.

14. TERMINATION

- 14.1 Either Party may terminate the Agreement and Specialist's use of Platform at any time for convenience by giving three months' written notice to the other Party. Any individual Specialist Engagement Contract can be terminated for convenience by giving the notice set out in the SOW. Provided Specialist continues to deliver the Project, all Specialist Fees are payable during any notice period under the Agreement or any individual Specialist Engagement Contract.
- 14.2 Either Party may terminate the Agreement and Specialist's use of Platform, with immediate effect, by giving written notice to the other Party if: (a) the other Party commits a material breach of the Agreement which is not capable of remedy (or is capable of remedy, but which the other Party fails to remedy within 30 days of receiving notice specifying the breach and requiring the breach to be remedied); or (b) the other Party repeatedly breaches any of the Agreement 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 agreement between the Parties.
- 14.3 Either Party may terminate the Agreement and Specialist's use of Platform, with immediate effect, by giving the other Party notice if: (a) such other Party becomes unable to pay its debts within the meaning of section 123 of the *Insolvency Act 1986 (IA)* or obtains a moratorium under Part A1 of the IA; (b) such other Party 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 such other Party's property or assets; (d) such other Party shall make or offer to make any voluntary arrangement or composition with its creditors; (e) any resolution to wind up such other Party (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) shall be passed, any petition to wind up such other Party shall be presented and not withdrawn or dismissed within seven days or an order is made for the winding up of such other Party; (g) such other Party is the subject of a notice of intention to appoint an administrator, is the subject of a notice of appointment of an administrator, is the subject of an administration application, becomes subject to an administration order, or has an administrator appointed over it; (h) a receiver or administrative receiver is appointed over all or any of such other Party's undertaking property or assets; (i) any bankruptcy petition is presented, or a bankruptcy order is made, against such other Party; (j) an application is made for a debt relief order, or a debt relief order is made in relation to such other Party; (k) such other Party is dissolved or otherwise ceases to exist; or (l) the equivalent of any of these events occurs in relation to such other Party under Applicable Laws.
- 14.4 For the purposes of clause 14.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all material respects other than as to the time of performance.
- 14.5 Termination or expiry of the Agreement (howsoever occurring) shall not affect either of the Parties' accrued rights or liabilities, or the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination or expiry.
- 14.6 On termination or expiry of the Agreement: (a) all licences and authorisations granted to Specialist by Passionfruit under the Agreement will terminate; and (c) Client shall promptly return or delete (on Passionfruit's direction) all Passionfruit Confidential Information.
- 14.7 Termination or expiry of the Agreement shall also terminate all Specialist Engagement Contracts under it. If agreed by Passionfruit, Specialist may be given run off access to the Platform (without the ability to enter into contracts for new projects) to support an orderly end to Projects.

15. FORCE MAJEURE & DELAY

- 15.1 Passionfruit shall not be liable for any breach of the Agreement or any Specialist Engagement Contract directly or indirectly caused by circumstances beyond Passionfruit's reasonable control and which prevent Passionfruit from performing its obligations.
- 15.2 Specialist acknowledges and agrees that non-performance of any supplier of services to Passionfruit is not within the reasonable control of Passionfruit and that if such supplier suffers an outage or other event this shall not be a breach of the Agreement by Passionfruit. Passionfruit shall use reasonable endeavours to work the problem and achieve a work-around as soon as reasonably practical should this occur, keeping Specialist reasonably informed.

16. MODERN SLAVERY

- 16.1 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*.
- 16.2 Each Party warrants that at the date of the Agreement it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of, or in connection with, slavery and human trafficking.
- 16.3 Breach of this clause 16 shall be deemed a material breach of the terms of the Agreement which is irremediable.

17. ANTI-BRIBERY AND CORRUPTION

- 17.1 Each Party agrees to: (a) comply with Applicable Laws relating to anti-bribery and anti-corruption including the *Bribery Act 2010 (Bribery Act)*; (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act (as amended) if such activity, practice or conduct had been carried out in the United Kingdom; and (c) promptly report to, respectively, the other Party's CEO or Chair, any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of the Agreement.
- 17.2 Breach of this clause 17 shall be deemed a material breach of the terms of the Agreement which is irremediable.

18. ANTI-FACILITATION OF TAX EVASION

- 18.1 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 in all the circumstances to prevent the facilitation of tax evasion by another person; and (c) promptly report to the other Party any relevant request or demand received from a third party to facilitate the evasion of tax in connection with the performance of the Agreement.
- 18.2 Breach of this clause 18 shall be deemed a material breach of the terms of the Agreement which is irremediable.

19. IMPORT TAX, EXPORT & SANCTIONS

- 19.1 Each Party shall comply with Applicable Laws relating to import and export and trade sanctions.

20. GENERAL

- 20.1 Headings shall not affect interpretation.
- 20.2 Interpretation of general words shall not be restricted by words indicating a particular class or particular examples.
- 20.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 20.4 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the *Companies Act 2006*.
- 20.5 A reference to a company shall include any company, corporation, or other body corporate, wherever and however incorporated or established.
- 20.6 A reference to a statute or statutory provision is a reference to it as amended, extended, or re-enacted from time to time.
- 20.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 20.8 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 20.9 No variation of the Agreement shall be effective unless it is in writing and signed by or on behalf of each Party. Specialist may not agree a variation on behalf of an Employer.
- 20.10 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. Nothing in the Agreement shall prevent Passionfruit from entering into any agreement or arrangement in relation to any fundraising or public offering.

- 20.11 Passionfruit may engage any third party to perform its obligations under the Agreement, provided that Passionfruit shall remain fully liable to Specialist for performance of such obligations (subject to the exclusions and limitations in the Agreement).
- 20.12 Specialist shall not, without the written consent of Passionfruit (which shall not be unreasonably withheld or delayed) assign or transfer any of its rights or obligations under the Agreement to any third party which is not a Group Company.
- 20.13 The Agreement is the entire agreement between the Parties, and replace all previous agreements and understandings between them, relating to its subject matter.
- 20.14 Nothing in the Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties. 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.
- 20.15 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. In respect of each Project, the Client may enforce this Agreement against any Sole Trader/PSC/Employer.
- 20.16 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. 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.
- 20.17 Any other notices and communications under the Agreement may be delivered in writing and/or by email, but not by messaging platforms (for example, WhatsApp, Slack, Zoom, Teams, etc).
- 20.18 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. 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.
- 20.19 No failure or delay by a Party to exercise any right or remedy provided under the Agreement or by Applicable Laws shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. 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.
- 20.20 The rights and remedies expressly conferred by the Agreement are cumulative and additional to any other rights or remedies a Party may have.
- 20.21 Expiry or termination of the Agreement (howsoever occurring) shall not affect either of the Parties' accrued rights or liabilities, or the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination or expiry.
- 20.22 Neither Party may commence any court proceedings in relation to any dispute or difference between Passionfruit and Specialist arising out of the Agreement until it has attempted to settle the dispute by mediation as set out in clause 13 and either the mediation has terminated or the other Party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay. (Nothing in clause 13 shall prevent a Party from seeking relief to protect its Intellectual Property Rights or Confidential Information.)
- 20.23 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 to determine any dispute arising in connection with the Agreement, including disputes relating to any non-contractual obligations.

Part B: Specialist Engagement Terms

Unless terms are specifically defined in these Specialist Engagement Terms they will have the meaning given to them in the Specialist Platform Terms. The Specialist Platform Terms are incorporated into the Specialist Engagement Contract.

1. Effective Date

- 1.1 With effect from the point the Platform records the agreed SOW, Passionfruit and Specialist agree to be bound by these Specialist Engagement Terms, and a single Specialist Engagement Contract is formed directly between Passionfruit and Specialist for the Project set out in the SOW. (At the same time, a separate single *Specialist Supply Contract* is formed directly between Client and Passionfruit subject to the *Client Supply Terms*.)
- 1.2 The term of the Specialist Engagement Contract is the period of the Project as set out in the SOW, subject to any extensions or early termination in accordance with this Specialist Engagement Contract.

2. Services

- 2.1 Specialist shall deliver to Client: (a) the services set out in SOW; and (b) all other obligations of Specialist set out in these Specialist Engagement Terms (**Project Services**), and any amendments and/or additions to the Project Services that

may be agreed between Client and Specialist and recorded in an updated SOW in the Platform.

- 2.2 In performing obligations under this Specialist Engagement 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 Project Services to the standard to be expected of a professionally experienced supplier of services similar to the Project Services; (b) ensure that, when providing the Project Services, it does not interfere with the activities of Client, its employees, agents, suppliers or customers except as reasonably necessary to carry out the Project Services, and co-operates with any other suppliers of products and services which may need to interface with, or be used in conjunction with, the Project Services; (c) ensure that all written information and materials given by Specialist to Client are or were accurate when given; and (d) comply with all Applicable Laws and Client policies and procedures from time to time insofar as they are relevant to the Project Services and have been provided to Specialist, including all relevant security and code of conduct policies.
- 2.3 Specialist has the unfettered right to substitute/sub-contract to any other person in relation to the delivery of the Project Services. Specialist shall ensure such person possesses the necessary skills, qualifications, and experience necessary to deliver the Project Services.
- 2.4 Specialist shall remain liable for all acts and omissions of substitutes/sub-contractors (including ensuring compliance with Client policies) and be responsible for payment of their charges, compensation, benefits and/or expenses (as applicable).
- 2.5 Either Client or Specialist may end Specialist's delivery of the Project Services by giving the notice for convenience set out in the SOW (and this Specialist Engagement Contract shall terminate at the end of the notice period).
- 2.6 If Specialist is Materially Unavailable during the Project, Client may notify Passionfruit, and Passionfruit shall notify Specialist. **Materially Unavailable** means that the Specialist has failed to respond to a communication for more than one week. Passionfruit and Client shall assess the reason for the Specialist being Materially Unavailable, acting in good faith, and taking into account the reason for the Specialist being Materially Unavailable (e.g., due to an event beyond Specialist's reasonable control or accident or illness of Specialist or their dependents). If there is no reasonable justification, Client may terminate the Specialist Supply Contract immediately and Passionfruit may terminate the Specialist Engagement Contract immediately. In the absence of proof of delivery of the Project Services whilst Materially unavailable, but subject to compliance with the *Conduct Regulations* (see clause 3.2), Specialist Fees are not payable for the period when Specialist was Materially Unavailable.

3. Specialist Fees

- 3.1 The Specialist Fees are set out for Clients in the Platform. Client deposits the Specialist Fees in advance via payment partner in accordance with the timetable set out in the SOW. The payment partner integration enables payment partner to hold Specialist Fees and release to Specialist in accordance with the timetable/milestones set out in the SOW.
- 3.2 Under the *Conduct Regulations* Passionfruit may not withhold from Specialist any payment due because of any failure by Client to pay the Specialist Fees. Payment partner will release the Specialist Fees in arrears to Specialist in accordance with the timetable/milestones set out in the SOW. Therefore, if Client fails to pay any Project Fees in advance, the Specialist Engagement Contract shall terminate with immediate effect (and Passionfruit shall terminate the corresponding *Client Supply Contract*) with immediate effect.
- 3.3 If the Specialist Engagement Contract is subject to the Off-Payroll Working Rules, Passionfruit shall procure compliance with the obligations of the fee payer under the Off-Payroll Working Rules.
- 3.4 If the Specialist Engagement Contract is subject to the Off-Payroll Working Rules, Client is obliged to use reasonable care as set out at <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10014>, including to: (a) monitor if working practices change and if they do, provide an updated *Status Determination Statement* to Passionfruit and Specialist; and (b) follow its *Client Led Disagreement Process* should Specialist challenge the *Status Determination Statement*. If Client is not subject to the Off-Payroll Working Rules, PSC Specialist shall continue to self-assess.
- 3.5 The Specialist Fees do not include applicable VAT, which Passionfruit shall pay, in addition to the Specialist Fees, at the rate prevailing on the date that the relevant Project Services were supplied, and in the manner prescribed by Applicable Laws.
- 3.6 Specialist 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 Specialist Fees.
- 3.7 Save where withheld under the Off-Payroll Working Rules, Specialist is 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 Specialist Fees.
- 3.8 Specialist shall indemnify Passionfruit 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 in connection with payment to the Specialist of the Specialist Fee. This indemnity expressly does not include: (a) responding to an enquiry against Client conducted under Part 2, Chapter 8 or Part 2, Chapter 10 of *Income Tax (Earnings and Pensions) Act 2003* or *NIC Social Security Contributions (Intermediaries) Regulations 2000* relating to the status of any Specialist under the Off-Payroll Working Rules (**OPW Enquiry**); (b) any taxes and interest owed in respect

of a PSC Specialist for which HMRC or any court hold Client accountable following an OPW Enquiry; (c) any penalties for which HMRC hold Client liable following an OPW Enquiry.

- 3.9 Passionfruit and Specialist shall co-operate with each other and insurers in relation to any query relating to a PSC Specialist and the OPW Rules. If Client receives any communication (written or verbal) from HMRC in connection with the OPW Status of a PSC Specialist, Client shall inform Passionfruit in writing within five working days. Client agrees that any delay may prejudice the response of any applicable insurance.

4. Intellectual Property Rights

- 4.1 **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 (and goodwill attaching to those trade marks 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.
- 4.2 Specialist hereby: (a) assigns to Client directly all Intellectual Property Rights in any original works created specifically for Client as part of the Project Services; and (b) grants to Client a non-exclusive, worldwide, perpetual and irrevocable licence to copy, store, distribute, publish, adapt, edit and otherwise use any deliverables not assigned under (a) for any and all purposes whatsoever.
- 4.3 Unless otherwise agreed in writing by Client, Specialist shall ensure that any third-party materials are licensed to Client in accordance with the relevant licensor's standard licensing terms and such terms are made available to Client. Before using any third-party materials Specialist shall seek approval from Client.
- 4.4 To the maximum extent permitted by applicable laws, Specialist shall procure that any individuals involved in the provision of the Services have irrevocably and unconditionally waived all moral rights (including rights of paternity and rights of integrity) in respect of any deliverables.
- 4.5 Specialist will use reasonable endeavours to do or procure the doing of all acts, and execute or procure the execution of all documents that Client may reasonably request from time to time in order to perfect or confirm Client's ownership of the rights assigned by this Specialist Engagement Contract.
- 4.6 Client shall grant to Specialist a non-exclusive, worldwide, perpetual and irrevocable licence to copy, store, adapt, edit and otherwise use any materials provided by or on behalf of Client as necessary to carry out the Project Services.

5. Confidential Information

- 5.1 **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 the entry into the Specialist Engagement Contract, directly or indirectly, by or on behalf of the Client to the Specialist. Confidential Information shall include: (a) details of relationships or arrangements or requirements of Client, including terms of business and pricing/purchasing arrangements in force or under discussion; (b) content of Client intranet (including policies, internal business materials, proposals, training materials and contact databases); (c) details of the Client's business methods and methodology, finances, prices or pricing strategy, marketing or development plans or strategies or forecasts, research and development information; (d) information divulged to Client by any third party in confidence; (e) the identity of any prospective client of Client and details of any discussions with prospective clients (including any proposals); (f) personal information about any of Client's directors, employees and other staff; (g) personal information about directors, employees or other staff any of Client's clients or prospective clients; (h) trade secrets and other information or knowledge which a reasonable person would believe to be of a confidential or secretive nature; (i) ideas and concepts whether patentable or not; (j) software, software development tools, source code, engineering information and hardware; and (k) deliverables produced by Specialist.
- 5.2 In consideration of Client making available the Confidential Information to the Specialist, Specialist undertakes to the Client 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 Project; (c) establish and maintain reasonable security measures to provide for the safe custody of, and to prevent unauthorised access to, the Confidential Information disclosed to it at least to the standards that it would adopt for its own Confidential Information; and (d) only make disclosure of the Confidential Information in accordance with clause 5.3. Any other disclosure can only be made with the Client's prior written consent.
- 5.3 The Specialist may disclose the Confidential Information to the minimum extent required by any order of any court of competent jurisdiction or any regulatory, judicial, governmental, or similar body or taxation authority of competent jurisdiction under Applicable Laws.
- 5.4 The obligations set out in clause 5.2 shall not apply, or shall stop applying, to Confidential Information which the Specialist can show to the Client'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 Specialist in breach of the Specialist

Engagement Terms; (b) was already lawfully known to the Specialist before it was disclosed by the Client; (c) has been received by the Specialist from a third party source that is not connected with the Client and that such source was not under any obligation of confidence in respect of that information; or (d) was independently developed by it without access to or use of any of the Confidential Information (whether in unaided retained memory or otherwise).

- 5.5 Nothing in this Specialist Engagement Contract shall prevent any person from reporting any reportable offence to the relevant authorities.
- 5.6 If requested by the Client at any time, Specialist shall immediately destroy or return to the Client all documents and other records of the Confidential Information that have been supplied to or generated by the Specialist. If the Confidential Information is stored in electronic form, the Specialist shall erase all such Confidential Information from its computer and communications systems and devices used by it (to the extent reasonably technically practicable).
- 5.7 Without prejudice to any other rights or remedies that Client may have, Specialist acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this clause 5. Accordingly, each Client shall be entitled to the remedies of injunctions, specific performance, or other equitable relief for any threatened or actual breach of this clause 5.
- 5.8 The Specialist shall be responsible for any unauthorised disclosure or use by its Representatives of the Client's Confidential Information, other than if such unauthorised disclosure or use was beyond its reasonable control.

6. Data Protection

- 6.1 **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.
- 6.2 **GDPR** means (a) the *European Union General Data Protection Regulation (EU) 2016/679* on data protection and privacy for all individuals within the European Union (**EU**) and the European Economic Area; (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* (each as amended, superseded, or replaced); and (c) any other data protection laws or regulations modelled on GDPR under Applicable Laws.
- 6.3 Specialist acknowledges that for the purposes of the Data Protection Laws, Client is the controller and Specialist is a processor. To the extent Specialist processes personal data on behalf of Client, the subject matter and the duration of the processing are as set out in the SOW. The nature and purpose of the processing are as set out in the SOW. The type of personal data being processed is as set out in the SOW or otherwise determined by Client, and which may include, but is not limited to, the following categories of data subjects: prospects, customers, business partners and vendors of Client (who are natural persons); employees or contacts of Client's prospects, customers, business partners and vendors; employees, agents, advisers and freelancers of Client (who are natural persons). The rights and obligations Client in connection with the data processing activities are as set out in the SOW and this Specialist Engagement Contract.
- 6.4 Specialist shall, in relation to any personal data processed in relation to the Project Services (**Project Personal Data**): (a) process that Project Personal Data only on written instructions of Client; (b) keep Project Personal Data confidential; (c) comply with Client's reasonable instructions with respect to processing Project Personal Data; (d) not transfer any Project Personal Data outside of the UK without Client's prior written consent (and Client consents to any transfers based on a mechanism approved by the GDPR unless more stringent requirements are set out in its relevant security policy); (e) assist Client at Client's cost in responding to any data subject access request and to ensure compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities; (f) notify Client without undue delay on becoming aware of a Project Personal Data breach or communication which relates to Client's compliance with the Data Protection Laws; (g) at the written request of Client, delete or return Project Personal Data and any copies on expiry or termination of the Specialist Engagement Contract unless required by the Data Protection Laws to retain the Project Personal Data; and (h) maintain complete and accurate records and information to demonstrate compliance with this clause 6.4 and allow for audits by Client or Client's designated auditor.
- 6.5 Specialist shall ensure that it has in place appropriate technical or organisational measures, which may be reviewed and approved by Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures.
- 6.6 If Specialist has chosen to opt out of the *Conduct Regulations* when agreeing the SOW, then the *Conduct Regulations* shall not apply to the Project from the point the SOW referencing this is recorded on the Platform. Specialist is free to withdraw the opt out (on behalf of the Specialist and PSC/Employer) at any time by giving not less than one week's notice to Passionfruit via email (and if notice is given during a Project, it shall be effective for the next Project). A Specialist who has not currently opted out of the *Conduct Regulations* may also notify Passionfruit of their opt out at any time by giving notice via email (and if the Specialist is mid-Project, the opt out shall be effective at the end of that Project.)

Part C: Marketplace Terms

The current version of the Marketplace Terms at <http://usepassionfruit.com/Marketplace-Terms>.