

Services Agreement

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Terms and Conditions

1. Background

A. Fruition is a provider of business process consulting, software implementation, integration, delivery and evaluation support services.

B. The use of this agreement in combination with a Work Order is to enable Fruition to provide one or more of the above services for multiple Clients without the need to revisit this master agreement each time.

C. Fruition agrees to provide one or more of the above services as specified in the applicable Work Order to the Client in accordance with each Services Agreement.

The parties agree

2. Binding Terms

2.1 Services Agreement

Each Services Agreement will set out the terms on which Fruition will provide Services to the Client, and includes:

- (a) These Terms and Conditions; and
- (b) The applicable Work Order; and
- (c) Any document that is attached to or referenced in the Work Orders.

3. Definitions and Interpretation

3.1 Definitions

The following definitions apply in these Terms and each Work Order:

Affiliate means any entity that directly or indirectly controls, is controlled by, is under common control with or is otherwise in the same group of entities.

Business Day means any day (other than a Saturday, Sunday or public holiday) on which registered banks are open for general banking business in Australia.

Client means the client that is to receive Services from Fruition, as specified in a Work Order.

Client Materials means all material, documents and information provided to Fruition by or on behalf of the Client in connection with these Terms and/or a Work Order, including price and product information, offer conditions, performance claims, product claims, research data and sales data.

Commencement Date means the commencement date for Services, as specified in a Work Order.

Confidential Information means:

(a) the contents of any Work Order, but not (for the avoidance of doubt) the existence of any Work Order; and

(b) any non-public financial, business or commercial information relating to a Party (in any form) which a Party may receive or obtain as a result of or in connection with these Terms and/or any Work Order, including but not limited to:

- Any information which is designated or indicated as being the proprietary or confidential information;
- Any information which a party ought to know is confidential;
- Trade secrets or other types of information which are capable of protection at law or equity as confidential information;
- Information from a third party, where a party is advised by the other party that such information is confidential.

(c) any information derived or produced, partly or wholly, from the information referred to above, including any calculation, conclusion, summary or computer modelling.

Consumer Price Index (CPI) is one of the consumer price indices used as the domestic measure of inflation in the UK. It is monthly measured and published by the Office for National Statistics, the recognised national statistical institute of the UK.

Contract Period means the contract period between Fruition and the Client, as set out in a Work Order.

Default Rate means 12% per annum, calculated daily and compounding monthly.

Dispute means any dispute arising under or relating to a Services Agreement.

Fees means the fees payable to Fruition by the Client, as specified in a Work Order.

Force Majeure Event means the occurrence of an event after the Commencement Date that is beyond the reasonable control of a Party which cannot reasonably be avoided or overcome by that Party and which is not attributable to the actions of that Party, including:

(a) cyber warfare, cyber attacks, ransomware attacks or cyber sabotage;

(b) war, hostilities (whether war is declared or not), invasions, acts of foreign enemies, civil war, sabotage or piracy;

(c) rebellion, terrorism, revolution, insurrection, military or usurped power, riots, civil commotion or disorder;

(d) operation of the forces of nature such as earthquakes, hurricanes, lightning, typhoons or volcanic activity;

(e) outbreaks of disease, pandemics, epidemics or quarantine (including, for the avoidance of doubt, as a result of COVID-19 or any strains thereof);

(f) instances of exceptionally adverse weather; and

(g) acts of government authority, whether lawful or unlawful.

For the avoidance of doubt, any strikes, lock-outs or other industrial disputes shall not constitute a "Force Majeure Event" for the purposes of each Services Agreement, irrespective of whether they relate to a Party's workforce or not and whether they are beyond the reasonable control of that Party.

Fruition means Fruition Services Limited, Companies House register number 16033160, with registered office at Mynshull House, 78 Churchgate, Stockport, Cheshire, England, SK1 1YJ.

VAT means Value Added Tax. It is a tax added to most products and services sold in the UK.

Intellectual Property means all intellectual property, proprietary and industrial rights (whether existing in statute, at common law or in equity), including:

(a) all copyright (including in source code and object code), rights in databases, know-how, trade secrets, methods (including business methods), technical and non-technical information, processes, characteristics, trade marks, trade names, business names, domain names, inventions, patents, design rights, discoveries and formulae;

(b) all designs, design details and specifications, concepts, sketches, photographs, working drawings, models and presentation materials;

(c) all improvements, enhancements, modifications or adaptations to any of the foregoing rights;

(d) the right to sue or bring proceedings for passing off;

(e) all allied, similar and associated rights, whether registered or unregistered, registrable or unregistrable;

(f) all applications to register, and all renewals of, any of the foregoing rights; and

(g) any and all other industrial or intellectual property rights.

Parties means Fruition and the Client, and Party means either one of them, including their administrators, successors or permitted assigns.

Pre-Existing Works means all materials that are:

(a) already owned and/or used by Fruition prior to providing Services; or

(b) subsequently created, developed, owned and/or used by Fruition other than in the course of providing Services that are then used by Fruition in providing Services,



including any proprietary software, tools, templates, systems, property, know-how, business processes and methodologies and any Intellectual Property vested therein.

Related Parties means, in relation to a Party:

- (a) any director, officer or employee of, or professional adviser to, that Party;
- (b) any Affiliate of that Party; and
- (c) any related company.

Services means the services and (as the case may be) products to be provided by Fruition to the Client, as set out in a Work Order.

Terms means these Terms and Conditions, as amended, novated, supplemented and/or replaced from time to time.

Third Party means any person or entity other than the Parties.

Third Party Works means any materials produced, developed, created or owned by a Third Party, including subcontractors, agencies, freelancers, photographers, stock libraries, media proprietors, artists, musicians, record labels or film studios.

Work Order means an order or requisition by the Client for the supply of Services from Fruition (by whatever name called) that:

- (a) is expressly made on and subject to the terms set out in these Terms; and
- (b) is signed or otherwise agreed to in writing by the Client and Fruition.

Works means all materials and property produced, developed or created by Fruition on behalf of the Client pursuant to a Services Agreement, including concepts, diagrams, proposals, documentation, videos, and all other works.

3.2 Interpretation

The following rules of interpretation apply in these Terms and each Work Order:

- (a) References to persons include natural persons, companies, and any other body corporates (wherever incorporated) and unincorporated bodies (wherever formed).
- (b) References to the Parties include their respective executors, administrators, successors, permitted assignees (subject always to the restrictions on assignment pursuant to clause 19.3) and permitted novates.
- (c) Headings and subheadings have been inserted for convenience only and will not affect the interpretation of these Terms.
- (d) References to clauses are to those in the Terms.
- (e) References to the words including, include or similar words do not imply any limitation and are deemed to have the words without limitation following them.

- (f) A gender includes each other gender and the singular includes the plural and vice versa.
- (g) All periods of time include the day on which the period commences and also the day on which the period ends.
- (h) References to time and dates are to time and dates in England.
- (i) References to written or in writing shall include all modes of presenting or reproducing words, figures and symbols in a visible form (including via email).

4. Contract Period

4.1 Commencement and duration

Upon a Work Order having been entered into by Fruition and the Client, each Service Agreement will come into effect on and from the Commencement Date and continue in force for the Contract Period, unless they are terminated in accordance with clause 12.

4.2 Rollover

If, for any reason, Fruition continues to provide Services to the Client after the expiry of the Contract Period, then these Terms will continue to apply to the provision of those Services unless and until a termination is effected under clause 12.

5. The Services

5.1 Provision of the Services

Fruition will perform and deliver the Services to the Client in accordance with the applicable Services Agreement.

5.2 Right to Suspend Services

Fruition may suspend the provision of Services to the Client if payment under a Services Agreement is not made by the Client by the due date issued on the applicable Work Order.

5.3 Work Orders

- (a) Fruition shall not be obliged to perform Services to the Client under these Terms unless and until a Work Order for those Services has been entered into.
- (b) For the avoidance of doubt, a Work Order is only entered if it has been signed or otherwise agreed to in writing by the Client and Fruition.

- (c) There shall be no limit on the number of Work Orders that Fruition may enter into with the Client.
- (d) Each Work Order entered into between Fruition and the Client shall give rise to a new and separate contract between them in respect of the Services to which that Work Order relates, in each case on and subject to the terms set out in these Terms.

5.4 Performance

When performing the Services, Fruition must exercise due care and skill in accordance with good industry practice.

5.5 Functionality rights

From time to time, Fruition may introduce new functionality into the Services. Fruition may, in its sole discretion, offer such new functionality to all its clients for an additional fee specified by Fruition.

5.6 Cessation and variation rights

(a) At any time upon 60 days written notice from the Client, it may request Fruition to:

- (i) cease work in connection with a Work Order; and
- (ii) change the Services to be provided in connection with a Work Order,

and Fruition shall take all reasonable steps to comply with any such request to the extent that Fruition can do so within its contractual obligations to media, suppliers or other Third Parties.

(b) In the event of any cessation or change under clause 5.6(a), the Client must:

- (i) pay to Fruition all Fees incurred in relation to any and all Services performed up to the date of notice by the Client;
- (ii) pay to Fruition all expenses incurred by Fruition that are to be reimbursed under clause 6.4; and
- (iii) indemnify Fruition against any losses, claims, demands, liabilities, actions, proceedings and costs (including solicitor-client costs) that arise in connection with Fruition acting in accordance with the scope and the Client's original instructions under the applicable Work Order until receipt of the Client's notice under clause 5.6(a) and as a result of acting in accordance with that notice.

(c) In the event of change under clause 5.6(a)(ii), the Client must use reasonable endeavours to ensure that any changes to the Work Order are notified to Fruition as soon as practicable.

5.7 Postponement of Services

(a) The Client may postpone the Services under a Work Order only if:

(i) the postponement is caused by the Client, by providing Fruition with at least 14 days' written notice; or

(ii) if the postponement is because of a Force Majeure event, by providing as much notice as is reasonably practicable.

(b) When postponing services under clause 5.7(a), the Client must use reasonable endeavours to ensure the new date for providing Services is within 60 days of the initial date.

(c) If the postponement to the Services is caused by the Client and a new date for providing Services cannot be agreed within 14 days after the notice to postpone has been given by the Client, the Supplier is deemed to have terminated the Services Agreement to which the corresponding Services relate.

5.8 Requests for instructions

(a) At any time Fruition may, if it reasonably deems it to be necessary or appropriate, request instructions from the Client within a reasonable period prior to taking action with respect to any matter in connection with the provision or delivery of the Services.

(b) The Client shall, as soon as reasonably practicable, respond to any such request for instructions.

(c) Actions taken by Fruition in accordance with the instructions of the Client under this clause 5.8 shall be deemed to be proper conduct within the scope of the Services to be provided by Fruition.

6. Fees and Expenses

6.1 Fees

(a) In consideration for its provision of the Services, the Client will pay to Fruition the Fees in accordance with the applicable Services Agreement.

(b) The Client acknowledges and agrees that prices issued in Work Orders will be subject to increase based on CPI, where applicable.

6.2 Out of scope work

(a) If the Client requests Fruition to provide any services that are additional to or outside of the scope of the Services set out in a Work Order, and Fruition agrees to provide the additional services, then:

(i) Fruition shall be entitled to charge the Client; and

(ii) the Client shall pay Fruition,

for the additional services on a time and materials basis, determined by reference to Fruition's then prevailing costs and professional rates.

(b) If clause 6.2(a) applies, any new services that are provided under that clause will be treated as and deemed to be Services under these Terms.

6.3 Invoices

Fruition will provide invoices to the Client for the Fees in accordance with the applicable Work Order.

6.4 Expenses

The Client will reimburse Fruition for all expenses reasonably incurred by Fruition in performing the Services, provided that:

- (a) the Client, or the employee or manager of the Client who Fruition primarily reports to, has approved in writing the scope or details of any such expense before it is incurred, which shall include if the expenses have been pre-approved by the Client in the Work Order;
- (b) Fruition produces all relevant receipts and other documentation to the Client in respect of such expenses; and
- (c) such expenses are itemised in Fruition invoices under clause 6.3.

6.5 VAT

- (a) Fruition may, in addition to any other amount payable in that Services Agreement, recover from the Client an additional amount on account of VAT, such amount to be calculated on the basis of the current VAT rate at that time.
- (b) Unless otherwise specified, any amount payable under the Services Agreement is exclusive of VAT.

6.6 Timing and manner of payment

- (a) The Fees and all expenses properly incurred by Fruition under clause 6.4 will be paid At the time specified in the applicable Work Order or otherwise no later than 30 days after which the Work Order is issued; and
- (b) In the manner specified in the applicable Work Order.

6.7 Default interest

If a sum required to be paid by the Client under the Services Agreement is not paid to Fruition on the due date the Client shall, upon the written demand of Fruition, also pay interest on that sum at the Default Rate for the period beginning on the due date and ending on the date that the sum is paid by the Client.

6.8 Disputed invoices

- (a) If the Client disputes all or part of an invoice it must promptly notify Fruition in writing of this fact, setting out the reasons for the dispute.
- (b) The Client must pay any undisputed balance of an invoice.
- (c) If the Client does not dispute an invoice within 10 Business Days of receipt, it will be deemed to have accepted the invoice in full.

7. Client Responsibilities

7.1 Client obligations

- (a) The Client will provide reasonable support and direction to Fruition in order to assist Fruition to provide the Services.
- (b) The Client must perform its obligations under each Services Agreement:
 - (i) in accordance with all applicable laws;
 - (ii) with due care and skill;
 - (iii) to a high professional standard; and
 - (iv) ensure Fruition is provided with the Client Materials and any information reasonably requested by Fruition to ensure the provision of the required Services in accordance with the applicable Services Agreement.

7.2 Client responsibilities

- (a) The Client is responsible for the quality and accuracy of all Client data and other input provided to Fruition by the Client or any party providing data on the Client's behalf. Fruition shall not be responsible in any way for any delay resulting from any failure by the Client to comply with the Client's responsibilities under this sub-section.
- (b) In the event that the Client is directly providing its data to Fruition for the provision of Service, the Client must bear the expense of providing such data to Fruition.

In the event that Client data is provided by a third party, the Client's use of services is contingent upon the third party data providers giving Fruition access to that data.

8. Intellectual Property

8.1 Ownership of Pre-Existing IP



(a) Subject to the following clauses under this section, nothing in this agreement will:

- (i) affect the ownership by a party of any Intellectual Property Rights existing at the Commencement Date or developed by that party outside the scope of this agreement; or
- (ii) other than as expressly specified in this agreement, grant to any party any rights in or to any Intellectual Property of the other party.

(b) For the avoidance of doubt, if a party provides to the other party, or otherwise grants the other party access to, any information or other materials in which Intellectual Property of the first-mentioned party subsist (including the Client Materials), ownership of that Intellectual Property will remain with the first-mentioned party.

(c) The Client agrees that any Intellectual Property existing in the Pre-Existing Works are owned by Fruition and no ownership in such Pre-Existing Works is vested in the Client at any time and in any respect.

8.2 Ownership of Client Materials

(a) The Client will own all Intellectual Property in the Client Materials.

(b) Nothing in the Services Agreement transfers any ownership rights in the Client Materials to Fruition.

8.3 Intellectual Property Licenses

(a) The Client grants to Fruition a revocable, royalty-free, non-transferable, nonexclusive license during the Contract Period to use the Client Materials for the purpose of providing the Services in accordance with the Services Agreement.

(b) Fruition is aware that the Client Materials cannot be used for any purpose that is not under this Service Agreement, even when it is de-identified. The Parties acknowledge and agree that, in providing the Services, Fruition may be required to use Pre-Existing Works.

8.4 The Works

(a) Fruition shall retain all rights, title and interest in any technology, best practices and Intellectual Property relating to the Works created for the Client, except for Client Materials and Client data. This ownership continues even after termination of the Services Agreement.

(b) For the avoidance of doubt, clause 8.4(a) extends non-exhaustively to any presentations, submissions and creative concepts, whether or not presented to, accepted or adopted by the Client in the development of a campaign.

8.5 Third Party Works

(a) The Client acknowledges and agrees that:

- (i) Fruition can only assign Intellectual Property that it actually owns;

(ii) in providing the Services, it may be required or appropriate for Fruition to use Third Party Works, including photography, stock images, film footage, illustrations, art or music; and

(iii) it may not be possible to secure assignments of Intellectual Property for certain Third Party Works and there may be limitations that exist with respect to their use and ownership. Accordingly, Fruition cannot guarantee that the Client will own any Intellectual Property in respect of the Third Party Works.

(b) If the circumstances set out in clause 8.5(a)(iii) apply:

(i) at the written request of the Client, Fruition shall take reasonable steps to obtain from the owner an assignment of the relevant Intellectual Property to the Client or a license to the Client to use the Third Party Works for such purposes and on such terms as may be negotiated in the circumstances;

(ii) any fees associated with such assignment or license will be borne by the Client; and

(iii) the Client will comply with any limitations on use as notified in writing to it by Fruition.

8.6 Fruition Intellectual Property

(c) Fruition shall retain all its intellectual rights including and not limited to its right, title and interest in any source code or HTML code, make-up files, specifications, designs, processes, techniques, improvements, derivative works thereof and proprietary software used by Fruition or its contractors and agents in providing the Services.

(d) The Client acknowledges and agrees that it must not, and must not attempt to, copy, reproduce, republish, transmit, disassemble, decompile, decrypt, reverse engineer or otherwise access or use such source code or HTML code, make-up files and proprietary software without the express prior written consent of Fruition.

(e) The Client acknowledges and agrees that it must not by any means sell, transform, translate, assign, pledge, mortgage, encumber or otherwise dispose of any Fruition Intellectual Property.

8.8 Enforcement of title

Each Party agrees to take all actions as may be reasonably required by the other Party to perfect or enforce a Party's title to Intellectual Property under this clause 8, which shall include signing and delivering any document required in order to perfect or enforce such title.

8.9 Enduring effect

The Parties agree that the provisions of this clause 8 shall survive the termination of the applicable Services Agreement.

9. Warranties

9.1 Warranties by Fruition

Fruition warrants to the Client that it has, and will continue to have at all times during the Contract Period:

(a) The necessary skills, expertise, knowledge, experience, competence and qualifications (as applicable) to perform the Services in accordance with the applicable Services Agreement.

9.2 Warranties by the Client

The Client warrants and represents that:

(a) It will ensure that its Related Parties does not cause a breach of the Agreement;

(b) It has all necessary rights, licenses and approvals required to perform its obligations hereunder;

(c) Its obligations are not in conflict with any other Client obligations or agreement (in writing or otherwise) with any ThirdParty;

(d) Provision or use of its data (whether supplied by it or a third party) shall not violate the rights of any ThirdParty;

(e) It will comply with all applicable foreign, federal, state and local laws, rules and regulations in the performance of its obligations hereunder.

9.3 Capacity

Each Party warrants to the other Party that each of the following statements is true and accurate, in all material respects as at the date of this Agreement:

(a) it has full legal capacity and power to:

(i) own its own property and to carry on its business; and

(ii) enter into each Services Agreement and to perform its obligations under them;

(b) where the party is a body corporate:

(i) it is duly incorporated and validly exists under the law of its place of incorporation; and

(c) all consents, authorisations and approvals that are necessary or required for that Party in connection with the entry into agreement and the applicable Work Order, and the assumption of rights and obligations under them, have been obtained or effected; and

(d) the entry into and performance of the applicable Services Agreement does not constitute a breach of any law or obligation by which that Party is bound and which would prevent it from entering into or performing its obligations under that Services Agreement.

(e) each Services Agreement constitutes a legal, valid and binding obligation on it and is enforceable in accordance with its terms;

(f) its personnel are competent and professional with experience appropriate to ensure full and proper performance of its obligations under each Services Agreement;

(g) the exercise of the intellectual property rights assigned or licensed to the other party under this Agreement will not infringe any intellectual property rights, moral rights or any other rights of any third party;

(h) no insolvency or bankruptcy event has occurred in relation to it; and

(i) so far as it is aware, there are no facts, matters or circumstances which give any person the right to apply to liquidate it or wind it up.

9.4 Enduring effect

The Parties agree that the provisions of this clause 9 shall survive the termination of the applicable Services Agreement.

10. Indemnity

10.1 Indemnity for breach

Each Party indemnifies, and will keep indemnified, the other Party against any losses, claims, demands, liabilities, actions, proceedings and costs (including solicitor-client costs) which the other Party may suffer or incur as a result of any breach of a Services Agreement by the indemnifying Party.

10.2 Exclusion

The indemnity in clause 10.1 will not apply to the extent that any losses, claims, demands, liabilities, actions, proceedings and costs which the Party incurs or is subject to has arisen from that Party's own fraud, negligence, wilful misconduct or default.

10.3 Procedure

A party seeking indemnification shall promptly notify the other party in writing of any claim for indemnification, provided, that failure to give such notice shall not relieve the indemnifying party of any liability hereunder.

10.4 Enduring effect

The Parties agree that the provisions of this clause 10 shall survive the termination of the applicable Services Agreement.

11. Limitation of Liability

Liability cap

Fruition's liability under a Services Agreement, whether arising in contract, tort (including negligence) or otherwise, is limited to the aggregate sum of the Fees paid by the Client to Fruition in the immediately preceding 6 month period.

In addition, Fruition will not be liable to the Client for any claim or defect arising from or based upon the following:

- (a) Any variation of the Services by the Client;
- (b) Any compilation of client data and submission to the Client, to the extent that such compilation and submission are conducted strictly in accordance with Client's instructions and the terms hereof;
- (c) Except with respect to Fruition's obligation to maintain during the term of this agreement all of the rights necessary to provide the Services and perform its obligations hereunder, any other cause beyond the control of Fruition or its Affiliates.

11.1 No consequential loss

Neither Party shall be liable for any indirect, consequential or special loss or damage, loss of revenue, economic loss or damage, loss of business or profits or anticipated business or profits, loss of goodwill, loss of anticipated savings or for any business interruption, whether or not that loss was, or ought to have been, contemplated by the Party in breach.

11.2 Risk Allocation

The parties expressly agree that this Agreement reflects the allocation of risks including the limitation of liability described in this clause 11. Any modification of such risk allocations would affect Fruition's fees; and in consideration thereof, the Client agrees to such risk allocations.

11.3 Enduring effect

The Parties agree that the provisions of this clause 11 shall survive the termination of the applicable Services Agreement.

12. Termination

12.1 Termination at the end of the Contract Period

The applicable Services Agreement will automatically terminate at the end of the Contract Period (without the requirement for notice) unless terminated earlier under this clause 12.

12.2 Termination by mutual agreement

Prior to the end of the Contract Period, the Parties may mutually agree in writing that the applicable Services Agreement will terminate.

12.3 Termination by notice

Prior to the end of the Contract Period, either Party may (at its sole discretion) terminate a Services Agreement by giving the other Party not less than 60 days' prior written notice.

12.4 Termination for cause

If a Party commits a material breach of these Terms and/or any Work Order that:

(a) is not capable of remedy; or

(b) is capable of remedy, and the defaulting Party does not remedy that breach within 10 Business Days of being required to do so in writing by the non-defaulting Party,

then the non-defaulting Party may terminate the applicable Services Agreement with immediate effect by giving written notice to the defaulting Party.

12.5 Termination as a result of a Force Majeure Event

Either Party shall be entitled to terminate a subsisting Services Agreement by giving not less than 20 Business Days' written notice to the other where a right of termination arises under clause 13.2 in connection with a Force Majeure Event.

12.6 Effect of termination

Upon termination of a Services Agreement (for whatever reason), the following provisions shall apply:

(a) Fruition will promptly deliver to the Client all property, materials or equipment belonging to or concerning the Client or any property owned by the Client which is in Fruition's possession or control.

(b) The Client shall, within 5 Business Days of the date of termination, pay to Fruition all sums due and owing to Fruition under the applicable Services Agreement that has been terminated, and all accrued Fees (whether or not invoiced at that time) shall be prorated up until the date of termination and be payable by the Client within 5 Business Days of the date of termination.

(c) Termination of a Services Agreement will not affect any accrued rights or obligations of the Parties.

12.7 Effect of Early Termination

Where the Client has terminated the Agreement pursuant to clause 12.3, it shall pay for any and all costs, fees or other expenses incurred by Fruition in the performance of disengagement services.

12.8 Enduring effect

The Parties agree that the provisions of this clause 12 shall survive the termination of the applicable Services Agreement.

13. Force Majeure

Force Majeure Events Neither Party shall be liable to the other, or be deemed to be in breach of these Terms, as a result of any delay or failure to perform its obligations due to any Force Majeure Event, provided that it:

- (a) takes all reasonable steps to perform its obligations and/or alleviate the delay; and
- (b) provides written notice of the nature and extent of the Force Majeure Event and the likely delay to the other Party as soon as reasonably practicable.

13.1 Right of termination or suspension

In the event that a Force Majeure Event continues for more than 60 days then:

- (a) either Party may terminate the applicable Services Agreement by giving no less than 20 Business Days' written notice; or
- (b) the Parties may agree in writing to suspend all or any of their obligations under the applicable Services Agreement.

13.2 Cessation of Force Majeure Event

This clause 13 shall cease to apply in respect of a Force Majeure Event when:

- (a) that Force Majeure Event no longer has any effect on the performance of the Party's obligations under the applicable Services Agreement; and
- (b) that Party has given written notice to the other Party that the Force Majeure Event has ceased.

14. Non-Solicitation

14.1 Restriction

During the Contract Period and for a period of one year thereafter, the Client will not solicit, employ, recruit or engage, or offer or attempt to solicit, employ, recruit or engage, any person who was employed or contracted by Fruition that the Client had contact with in connection with the Services.

14.2 Obligations

The Parties each acknowledge and agree that the obligations set out in clause 14.1 are:

- (a) considered to be reasonable;
- (b) material to Fruition's decision to enter into a Services Agreement;
- (c) necessary to protect and maintain the business and goodwill of Fruition; and
- (d) included in these Terms as Fruition has a legitimate interest to protect.

14.3 Consideration sufficient and adequate

The Parties each acknowledge and agree that the Services provided by Fruition to the Client under each Services Agreement, and the pricing and delivery structure under them, provides sufficient and adequate consideration for the obligations assumed by the Client under this clause 14.

14.4 Modifications and severability

If any obligation in this clause 14 is held invalid as an unreasonable restraint of trade or for any other reason whatsoever, but would have been held valid if part of its wording had been deleted or duration reduced, or the range of conduct or areas dealt with reduced in scope, that obligation will be deemed to apply with the appropriate modifications necessary to make it valid and effective.

15. Dispute Resolution

15.1 Negotiation

The Parties must use reasonable endeavours to resolve any and all Disputes by negotiation. If a Dispute is settled following negotiations under this clause 15.1, such settlement shall be recorded in writing and be signed by the Parties, whereupon it shall be final and binding on the Parties.

15.2 Mediation

If any dispute arises in connection with this Agreement, the Parties will attempt in good faith to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR.

Nothing in this Agreement shall prevent any Party from taking such action as it deems appropriate (including any application to a relevant court) for injunctive or other emergency or interim relief in relation to its rights.

16. Confidentiality

16.1 Confidentiality

Except as permitted in this clause 16, no Party will disclose or communicate to any third party any Confidential Information.

16.2 Fruition's obligation

Fruition's obligation under clause 16.1 only applies to the scope of its Work and to the extent that industry standards apply to that Work, provided that:

- (a) The Client manages the Work in their environment; and
- (b) Fruition lacks means of accessing or enabling any persons to access the Client Materials.

16.3 Security Obligations

Each party must establish and maintain effective security measures to safeguard the discloser's Confidential Information from any security, privacy or data breach, including any unauthorised access or use, and immediately notify the other if it becomes aware of any such breach.

16.4 Limits on obligations

This clause 16 will not apply to the disclosure of Confidential Information:

- (a) the other Party gives its prior written consent to;
- (b) to a Related Party of that Party, provided that:
 - (i) such Related Party has agreed to comply with that Party's confidentiality obligations under these Terms and the applicable Work Order; and
 - (ii) such Party will be and remain liable for all acts and omissions of their Related Parties concerning any Confidential Information disclosed to them;
- (c) required by law or any regulatory authority;
- (d) necessary to enable a Party to perform its obligations, or exercise its rights, under these Terms; or
- (e) at the time of disclosure is in, or subsequently enters, the public domain otherwise than by breach of confidentiality under this clause 16.

16.5 Enduring effect

The restrictions in this clause 16 will continue to apply indefinitely after the termination of these Terms, even where physical copies of the discloser's Confidential Information have been returned to the discloser or destroyed.

17. Privacy

17.1 Compliance

Each Party must comply with the Data Protection Act 2018, the UK General Data Protection Regulation (UK GDPR), and all other applicable privacy laws in the collection, storage, use, disclosure and other processing of personal data in connection with the Services, these Terms and/or any Work Order. This includes:

- (a) processing personal data lawfully, fairly and transparently with an appropriate lawful basis;
- (b) implementing appropriate technical and organisational security measures;
- (c) responding to data subject requests within statutory timeframes;
- (d) reporting personal data breaches to the Information Commissioner's Office and affected individuals as required; and
- (e) where acting as a data processor, processing data only on documented instructions and assisting the data controller in meeting UK GDPR obligations.

18. Notices

18.1 Written notice

All notices and other communications must be in writing and delivered to the Party to whom it is to be sent at their physical address or email address set out in the Work Order or as otherwise designated by the Party to whom it is to be sent.

18.2 Deemed delivery

Receipt of any notice or communication given under these Terms and/or any Work Order is effective:

- (a) at the time of delivery, if delivered by hand; or
- (b) if sent by email, on the date and time at which it enters the recipient's information system, as evidenced (if required by the recipient, where delivery is disputed) in a confirmation of delivery report from the sender's information; and

(c) on the next Business Day in the place to which it is delivered, if received after 5.00pm or on a day which is not a Business Day in that place.

19. General Provisions

19.1 Entire agreement

The Services Agreement constitutes the entire agreement and understanding of the Parties relating to the matters dealt with in these Terms and supersedes and extinguishes any previous agreement (whether oral or written) between the Parties in relation to such matters.

Nothing in this clause 19.1 operates to limit or exclude any liability for fraud.

19.2 Agreement forms part of Work Order

The terms of this Agreement are part of, and should always be read together with, each Work Order.

19.3 Assignment

No Party will assign or transfer, or purport to assign or transfer, any of their rights or obligations under these Terms without the prior written consent of the other Party (such consent shall not be unreasonably or arbitrarily withheld or delayed).

19.4 Survival

Clauses 8, 9, 10, 11, 12 and 16 survive termination of this Agreement, together with any other provision that by its nature is intended to survive termination.

19.5 Prevailing terms

These Terms will prevail over anything to the contrary contained in, or that may be in conflict or inconsistent with, any Work Order except where the Work Order expressly states that all or any part of it will prevail over these Terms.

19.6 No waiver

No Party will be deemed to have waived any right under a Services Agreement unless the waiver is given in writing by that Party. A failure to exercise or delay in exercising any right under a Services Agreement will not operate as a waiver of that right. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other provision in a Services Agreement.

19.7 Amendments

A Services Agreement may not be amended or varied in any way unless such amendment or variation is made in writing and signed by each Party.

19.8 Severability

If any provision of these Terms and/or any Work Order is found by a court or other competent authority to be void or unenforceable, such provision will be deemed to be deleted and the remaining provisions will continue in full force and effect.

19.9 Counterparts

Each Work Order may be signed and delivered in any number of counterparts, including by way of electronic transmission where a Party signs a counterpart and sends it as a PDF to the other Party by email. All such counterparts, when taken together, shall constitute one and the same instrument and, notwithstanding the date of signing, will be deemed to bear the date of the Work Order.

19.10 Electronic signing

A Party may sign a Work Order by way of the application of that Party's electronic signature.

19.11 Governing law and jurisdiction

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).



Signatures

Executed on

Fruition Services Limited VAT 478404859
acting by the following persons in accordance
with s127 of the Corporations Act 2001:

Kevin Zhao

Company Director