



MuTu Pro Terms of Participation

Parties:

- (1) MuTu System Limited, incorporated and registered in England and Wales with company number 8140536 whose registered office is at Hays Galleria, 1 Hays Lane, London, SE1 2RD ("MuTu").

and

- (2) Your Name.....

Your Occupation.....

Your Address.....

("You").

I hereby agree to the Terms contained in this Agreement.

Signature.....

Date.....

Background:

- (A) MuTu, as a result of practical business experience, has developed the MuTu System.
- (B) MuTu has built up a substantial reputation and goodwill in the MuTu System, which is associated with the highest standards of service.
- (C) MuTu or its directors are the exclusive owner of all rights in the Trade Marks.
- (D) MuTu has developed specialised Products and Services used in the MuTu System. MuTu's current range of Products and Services is listed on its website.
- (E) MuTu is the owner of Intellectual Property rights in the MuTu System.
- (F) MuTu has both registered and unregistered Trade Marks which are associated with the Products and/or Services.

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- (G) You wish to acquire from MuTu the right to operate as a Mutu Pro in accordance with the terms of this Agreement.

Operative Provisions:

Please see Schedule 1 for Definitions and Interpretation that apply to the following terms.

1. RIGHTS GRANTED

- 1.1 **Licence to operate as a MuTu Pro.** In consideration of the payments made or agreed to be made in clause 3, MuTu grants you licence to:

1.1.1 operate your Business using the term “certified as a MuTu Pro”; and

1.1.2 use the Intellectual Property in respect of your Business

in accordance with the System, during the Term and in accordance with the provisions of this Agreement and the Brand Guidelines and the Course Materials and the Trade Mark Licence at clause 1.2.

- 1.2 **Trade mark licence.** MuTu grants you a non-exclusive licence to use the Trade Marks in relation to MuTu System, subject to the terms of this Agreement and the Brand Guidelines. Additionally:

1.2.1 any goodwill derived from your use of the Trade Marks shall accrue to MuTu. MuTu may at any time call for a document confirming the assignment of the goodwill and you shall immediately execute it;

1.2.2 no rights or licences are conferred on you except those set out in this Agreement and the Brand Guidelines;

1.2.3 you shall provide to MuTu on its request full details and examples of how you are using the Trade Marks in your Business;

1.2.4 you shall not do or fail to do any act or thing whereby the validity, or enforceability or MuTu’s ownership of the Trade Marks or the reputation of goodwill associated with the Trade Marks are likely to be prejudice; and

1.2.5 you shall not apply for, register or challenge any of the Trade Marks or any similar marks.

2. TERM

- 2.1 **Initial Term.** The Initial Term of the agreement is 12 months from the date of this Agreement (subject to earlier termination in accordance with clause 12).

- 2.2 **Renewed Term.** You may, by notice in writing to MuTu, either before the end of the Initial Term or any Renewed Terms or within 2 months after the end of the Initial

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Term or any Renewed Term, request the term of this Agreement to be renewed for a period of 12 months. MuTu shall accept a renewal of the term of this Agreement, if:

- 2.2.1 you have paid a renewal fee agreed upon sign up as a MuTu Pro in the 12 months before the end of the Initial Term;
- 2.2.2 you have attended and successfully completed any online recertification course and test as may be required by MuTu from time to time;
- 2.2.3 you have a current Relevant Profession certification together with any further qualifications or updated practices record as may be required by your professional regulatory body and you have submitted evidence of that certification to MuTu in accordance with this Agreement;
- 2.2.4 at the end of the Initial Term, there are no outstanding material breaches by you of this Agreement and there are no grounds on which MuTu has a right to terminate this Agreement under clause 12; and
- 2.2.5 you have at all times performed your obligations under this Agreement to the reasonable satisfaction of MuTu and your Business meets MuTu's requirements.

2.3 **No waiver.** Unless the parties agree otherwise in writing, any renewal under this clause 2 shall be without prejudice to the rights of MuTu outstanding at the end of the Initial Term.

2.4 **Termination on expiration of Term.** Unless it is terminated earlier under clause 12, this Agreement shall terminate at the end of the Term.

3. FEES

3.1 **Fees.** You will pay the fees detailed in Schedule 3.

3.2 **Payment method.** Unless MuTu otherwise notifies you in writing, you shall make all payments electronically online in the method detailed on the Website.

3.3 **Sales Tax.** All fees due under this Agreement are exclusive of Sales Tax, which shall, where applicable, be paid by you at the prevailing rate on the due date for payment or receipt of the relevant invoice from MuTu (as may be).

3.4 **Third party suppliers.** You shall be responsible for the payment of all invoices due to third party suppliers.

4. MUTU'S INITIAL OBLIGATIONS

4.1 MuTu shall within 14 days of the date of this Agreement, subject to you successfully having completed the Initial Training detailed at clause 7, provide:

- 4.1.1 the Course Materials;

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- 4.1.2 a copy, on loan, of the Brand Guidelines;
- 4.1.3 provided that you comply with the Brand Guidelines, such advertising for your Business on the Website in such manner as it may, in its absolute discretion, think fit, including displaying your Profile;
- 4.1.4 promotion of MuTu Pros in interviews and on the Website and social media sites; and
- 4.1.5 the ability for you to be an affiliate partner for sales of the Products with commission of 33% on sales of digital Products and 10% on physical Products, where end users buy MuTu Products using your affiliate link or by another qualifying method as notified to you by MuTu from time to time. All commissions earned by you will be paid to you via PayPal.

4.2 For the avoidance of doubt, MuTu will not affiliate to your Business in any way. MuTu will not join your Business or any other program provided by you and it will not promote any of your specific services or include any adverts on our site in relation to your Business except what is specified at clause 4.1.3 above.

5. **MUTU'S CONTINUING OBLIGATIONS**

MuTu shall at all times during the Term:

- 5.1.1 update the Brand Guidelines and System from time to time and inform you of all such updates; and
- 5.1.2 offer you the opportunity for undertake Further Training (for an additional fee to be notified to you).

6. **YOUR OBLIGATIONS**

You shall at all times during the Term, in relation to your Business, comply with the obligations set out in this Clause 6.

6.1 **Relevant Profession.** You shall:

- 6.1.1 have a Relevant Profession certification prior to the date of this agreement;
- 6.1.2 maintain your Relevant Profession certification for the term of this Agreement; and
- 6.1.3 provide electronic copies of your Relevant Profession certification in the form of scanned PDFs (or any other format as may be requested by MuTu from time to time) prior to the Initial Training.
- 6.1.4 you declare that all the information provided by you to MuTu relating to your education, training, experience and Relevant Profession certification is true and accurate.

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6.2 Trading. You shall:

- 6.2.1 operate your Business strictly in accordance with the highest standards; and
- 6.2.2 introduce any improvements or modifications into your Business when requested by MuTu.

6.3 Promotion. You shall:

- 6.3.1 use your best endeavours to promote and extend your Business;
- 6.3.2 use your best endeavours to protect and promote the goodwill in the MuTu System;
- 6.3.3 not do anything that could or might in the sole opinion of MuTu bring the MuTu System into disrepute or damage the reputation of the MuTu System; and
- 6.3.4 not provide any information to the media about the MuTu System unless MuTu's prior written consent has been obtained.

6.4 Supplies to customers. You shall:

- 6.4.1 supply your Services and promote the Products only to end users;
- 6.4.2 supply products to end users only on the standard terms and conditions of sale and not on any other terms;
- 6.4.3 supply Services to End Users only as set out in the Course Materials and ensure that the supply of Services is of the highest standard and complies with all applicable laws, regulations, industry standards and codes of practice. You may not deliver Services that have been altered or changed in any way from the Course Materials; and
- 6.4.4 promptly refund the price of any Services supplied by or on behalf of you which does not conform with the high standards required by the System.

6.5 Disclosure of information. You shall:

- 6.5.1 without delay, inform MuTu of any possible or actual improvement or modification to the MuTu System or System or business opportunity which comes to its attention;
- 6.5.2 promptly give MuTu any information that you may obtain in relation to any matter that could affect sales favourably or unfavourably;
- 6.5.3 supply MuTu with such information relating to your Business in such form and at such times as MuTu may from time to time require;

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- 6.5.4 keep details of actual and potential customers as specified by MuTu and supply the same, at MuTu's option, electronically or in hard copy format or allow MuTu to access a copy of the same electronically immediately on request;
 - 6.5.5 at the request of MuTu, provide potential MuTu Pros with information as reasonably requested; and
 - 6.5.6 allow MuTu to institute programmes for auditing customer satisfaction and/or measuring quality control issues and provide all such assistance in relation thereto as MuTu shall require.
- 6.6 **Branding and MuTu Pro relationship.** You shall:
- 6.6.1 fully conform to the Brand Guidelines and the Trade Mark Licence;
 - 6.6.2 attach any notices that MuTu requires to Stationery, Products and packaging;
 - 6.6.3 use only signs and packaging in connection with your Business as have been approved by MuTu; and
 - 6.6.4 give such notices in such places as required by law and as MuTu may require to the effect that you are operating your Business under licence from MuTu.
- 6.7 **MuTu Pro certification in practice.** Under the MuTu Pro agreement, you have two options for putting your MuTu Pro certification into practice:
- 6.7.1 use the MuTu Pro training to influence and educate your own practice and teachings to clients, weaving elements of the MuTu System into your existing professional services; or
 - 6.7.2 teach the MuTu System exactly as laid out in the MuTu Pro training and our online programs entitled The MuTu System

In the event you decide to teach the MuTu System as the 12 week programs (i.e. option 2 above) then there are some rules that must be followed in order to protect the brand:

- a) you may call your sessions or classes 'The MuTu System with a certified MuTu Pro' only. This may be written as plain text or represented using the graphic exactly as provided;
- b) the classes you teach must be free from any variation in content or progression from the existing 12 Week or Focus program; and
- c) your clients are required to purchase the relevant online program to compliment this category of training with you.

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6.8 **Internet.** You shall:

- 6.8.1 not promote your Business or sell or make available the Products or the Services whether for the purposes of advertising, promotion, sales or otherwise through or on the world wide web, internet or any other electronic means without MuTu's prior written consent which shall be given subject to such conditions as MuTu shall consider necessary to protect the goodwill and reputation of the MuTu System;
- 6.8.2 if required by MuTu, participate in MuTu's website as stipulated by MuTu.
- 6.8.3 not participate in or register with any internet group, web site or similar medium which has as its aim (whether stated or not) or effect the denigration of the MuTu System;
- 6.8.4 use your own social media account in connection with the promotion of the MuTu System provided you comply with the MuTu Pro Brand Guidelines; and
- 6.8.5 state on your business website or Facebook page or other social media platforms that you are a MuTu Pro. After termination or expiry of this Agreement this statement must change to the past tense and say that you have previously attended the MuTu Pro training. MuTu has an absolute discretion to withdraw the right for you to use the Intellectual Property in this way.

6.9 **Miscellaneous.** You shall:

- 6.9.1 obtain, maintain and comply with all necessary licences and consents and comply with all relevant legislation in relation to your business; and
- 6.9.2 not license any other person to operate the MuTu System.

6.10 **Any breach of the terms relating to Intellectual Property or Professional Certification.** If you breach the Brand Guidelines or any terms relating to the Intellectual Property or any of the terms relating to Relevant Profession, MuTu has the right to immediately terminate this Agreement, including but not limited to the Trade Mark Licence. In addition to this right, your Profile will be immediately removed from the Website, following which MuTu will give you notice of this removal within 7 days of the removal. You may submit a response to this notice within 7 days of the date on the notice requesting that your Profile be reinstated on the Website together with information you would like MuTu to consider. MuTu is under no obligation to consider these reasons and shall be under no obligation to reinstate your profile.

7. **TRAINING**

7.1 **MuTu training obligations.** MuTu shall:

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7.1.1 provide an initial training programme (“Initial Training”) to you and shall give you notice of when you have, in its reasonable opinion, successfully completed such training. MuTu has absolute discretion over the content of the Initial Training; and

7.1.2 provide further training programmes (“Further Training”) to you per calendar year. Such training shall take place at such time and place as MuTu shall specify. MuTu has absolute discretion over the content of the Further Training.

7.2 **Your training obligations.** You shall:

7.2.1 not start providing the MuTu System until you have, in the opinion of MuTu, successfully completed the Initial Training;

7.2.2 ensure that you attend such Further Training as MuTu may require. Such training shall be charged for by MuTu and shall take place at such time and place as MuTu shall specify.

8. **COMPLIANCE WITH LAWS AND POLICIES**

8.1 Each party shall at its own expense comply with all laws and regulations relating to its activities under this Agreement, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals.

8.2 **Mandatory Polices.** You shall comply with the Mandatory Polices and any and all industry codes that apply to your Relevant Profession, in each case as MuTu or the relevant industry body may update them from time to time.

9. **ADVERTISING**

9.1 **MuTu advertising obligations.** MuTu shall:

9.1.1 promote the MuTu System in such manner and at such times as it shall in its absolute discretion think fit;

9.1.2 be entitled at its discretion (but is not obliged to) provide you with such promotional display literature and other point-of-sale material as it, in its absolute discretion, thinks fit.

9.2 **Your advertising obligations.** You shall:

9.2.1 promote and advertise your Business in accordance with the Brand Guidelines.

1. **INSURANCE**

10.1 **Compulsory cover.** Compulsory cover. You shall take out and maintain an all-risk insurance policy with a reputable insurance company (or companies) with such amount of minimum cover as MuTu may, in its absolute discretion, specify. The current minimum amount of cover is \$ 1million per incident and minimum \$ 3million total cover. For those Pros not based in the USA the minimum amount of cover shall be the equivalent amounts in your local currency as notified and approved in writing by MuTu. For all Pros MuTu may in its absolute discretion change the amount of cover you are required to have by giving you notice in writing and you must change your insurance cover accordingly within 30 days of receiving such notice. Such policy (or policies) shall include:

10.1.1 public liability (also known as general liability); and

10.1.2 professional indemnity cover (also known as professional liability)

10.2 **Compliance with insurance policies.** You shall not breach, or allow any breach of, such insurance policies.

10.3 **Copies.** You shall provide MuTu with copies of all such policies prior to the Initial Training and renewals during the course of this Agreement.

10.4 **Premiums.** You shall promptly pay all premiums for such policies and immediately provide MuTu with evidence of payment of premiums.

10.5 **Failure to insure.** If you fail to take out and maintain such policies, MuTu has the right to immediately terminate this Agreement and any and all permissions granted to you by this Agreement will terminate.

11. **INTELLECTUAL PROPERTY**

11.1 **MuTu's warranty.** MuTu warrants that it is not aware of any reason why it might not be entitled to license the Intellectual Property and why the use of the Intellectual Property by you in accordance with the terms of this Agreement would constitute an infringement of any third party's intellectual property.

11.2 **Compliance.** You shall, at all times, comply with the terms and conditions of the Brand Guidelines and the Trade Mark Licence. If there is any inconsistency between the Brand Guidelines, the Trade Mark Licence and this Agreement, this Agreement shall prevail.

11.3 **Limited rights granted.** You acknowledge that:

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- 11.3.1 it does not have any right, title or interest in the Intellectual Property or any updates or improvements to it, save as specifically set out in this Agreement, the Brand Guidelines and the Trade Mark Licence; and
- 11.3.2 any goodwill (and any other rights) in the Trade Marks which result from the use by you of the Trade Marks shall vest in MuTu.
- 11.4 **Obligation to report.** If you learn of any threatened or actual infringement of the Intellectual Property, or of any circumstance which suggests that the use of the Intellectual Property may infringe the intellectual property of a third party, it shall immediately inform MuTu, giving all such details as MuTu requests.
- 11.5 **Conduct of proceedings.** MuTu shall have conduct of any proceedings relating to the Intellectual Property and may take whatever action it, in its sole discretion, decides in respect of any infringement or alleged infringement of it, or arising from its use. Any rights that you have under section 30 of the Trade Marks Act 1994 are excluded. You shall co-operate with MuTu in taking such action and MuTu shall meet any reasonable expenses of you in doing so.
- 11.6 **Your Intellectual Property obligations.** You shall:
 - 11.6.1 not apply for registration of any of the Intellectual Property (or any intellectual property that is confusingly similar to the Intellectual Property) in its own name, in any part of the world;
 - 11.6.2 comply with the Brand Guidelines and all requests by MuTu as to the use of the Intellectual Property and the ™, © and ® symbols in relation to the Intellectual Property;
 - 11.6.3 give assistance to enable MuTu to register its Trade Marks;
 - 11.6.4 not license (or purport to license) any other person to use any of the Intellectual Property;
 - 11.6.5 not use the Intellectual Property other than as specifically permitted by this Agreement, the Trade Mark Licence and the Brand Guidelines;
 - 11.6.6 not use any intellectual property that is confusingly similar to the Intellectual Property;
 - 11.6.7 not do anything that may adversely affect the Intellectual Property or MuTu's right or title to it; and
 - 11.6.8 immediately stop using specific advertising or promotional material or packaging on receipt of a request by MuTu to do so.
- 11.7 **Intellectual Property in Brand Guidelines.** You acknowledge and agree that all Intellectual Property in the Brand Guidelines is and shall remain the exclusive

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property of MuTu. You shall hold the Brand Guidelines in safe custody at its own risk and maintained and kept in good condition by you until returned to MuTu or destroyed at the option of MuTu in accordance with clause 13.3.

12. TERMINATION

12.1 **Termination for cause.** MuTu may terminate this Agreement with immediate effect (or following such notice period as it sees fit) without prejudice to any of its rights or remedies, by giving notice to you if:

12.1.1 you fail to pay any amount due under this Agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or

12.1.2 you commit a material breach of any term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so, unless another time period is specified by MuTu; or

12.1.3 you fail to successfully complete the initial training referred to in clause 7; or

12.1.4 you repeatedly breach any of the terms of this Agreement in such a manner as to reasonably justify the opinion that your conduct is inconsistent with having the intention or ability to give effect to the terms of this Agreement; or

12.1.5 you give to MuTu any false or misleading information, or make any misrepresentation in connection with obtaining this Agreement or during the Term, in connection with your Business; or

12.1.6 persistent, valid complaints continue to be made to MuTu about the quality of the service provided by you and you, having received notice of such complaints, fails to improve such service to the reasonable satisfaction of MuTu; or

12.1.7 the Trade Mark Licence is terminated; or

12.1.8 you, in the opinion of MuTu, do, or permit to be done, any act which might jeopardise or invalidate the registration of the Trade Marks or does any act which might assist, or give rise to, an application to remove the Trade Marks, or which might prejudice the right or title of MuTu to the Trade Marks; or

12.1.9 you purport to assign any of the rights or licences granted under this Agreement; or

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- 12.1.10 you fail to obtain any written approval or consent of MuTu as expressly required by this Agreement; or
 - 12.1.11 you suspend, or threaten to suspend, payment of you debts or you are deemed to be bankrupt, unable to pay your debts as they fall due for payment, or admit inability to pay your debts; or
 - 12.1.12 you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or enters into any composition or arrangement with your creditors generally; or
 - 12.1.13 you are the subject of a bankruptcy petition or order; or
 - 12.1.14 any trustee in bankruptcy, receiver, administrative receiver, administrator or similar officer is appointed over, your business or assets; or
 - 12.1.15 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days; or
 - 12.1.16 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1.11 to clause 12.1.15 (inclusive); or
 - 12.1.17 you suspend or cease, or threaten to suspend or cease, to carry on all or a substantial part of your Business; or
 - 12.1.18 you are in breach of any of its compliance obligations under clause 8.
- 12.2 **Material breach.** The parties acknowledge and agree that any breach of clause 1.2, clause 6, clause 0 or clause 19.3 shall constitute a material breach for the purposes of this clause.

13. **CONSEQUENCES OF TERMINATION**

- 13.1 **Survival.** On termination or expiry of this Agreement for any reason any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement, including clause 1, clause 1, clause 14, clause 15, clause 18, clause 19 shall remain in full force and effect.
- 13.2 **Accrued rights.** Any termination or expiry of this Agreement shall not affect any rights or liabilities that have accrued prior to such termination.
- 13.3 **Cessation of business.** On termination or expiry of this Agreement for any reason, MuTu shall remove your Profile from the Website. In addition, you shall:

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- 13.3.1 immediately pay MuTu the full amount of all sums due from you to MuTu together with any interest payable in accordance with clause 3;
 - 13.3.2 cease using the MuTu System and cease to trade under any of the Trade Marks including but not limited to MuTu Pro, and not hold yourself out as associated with MuTu or do anything that may indicate any relationship between you and MuTu;
 - 13.3.3 immediately stop using the Intellectual Property, including the Trade Marks;
 - 13.3.4 return or at the option of MuTu, destroy, all copies of the Brand Guidelines, Stationery, and other Products or materials bearing any of the Trade Marks;
 - 13.3.5 pay all debts owing to creditors of your Business, and irrevocably permit MuTu to deduct from all sums payable by MuTu to you all sums which MuTu pays (whether legally obliged to or not) pursuant to this clause; and
- 13.4 **Right of entry.** If you fail to fulfil its obligations under this clause 13 within a reasonable time, MuTu may, at the expense of you, immediately and without notice, take such steps as it thinks fit to fulfil any outstanding obligations.

14. **INDEMNITY**

- 14.1 You shall indemnify MuTu against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by MuTu arising out of or in connection with:
- 14.1.1 your breach or negligent performance or non-performance of this Agreement;
 - 14.1.2 the enforcement of this Agreement;
 - 14.1.3 any claim made against you for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with your Business;
 - 14.1.4 any claim made against you by a third party arising out of or in connection with your Business, to the extent that such claim arises out of your breach, negligent performance or failure or delay in performance of this Agreement;
 - 14.1.5 any claim made against you by a third party for death, personal injury or damage to property arising out of or in connection with your Business, to the extent that the claim is attributable to your acts or omissions.

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14.2 Nothing in this clause shall restrict or limit MuTu's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

15. DATA PROTECTION

15.1 Each party agrees that it shall, in relation to personal data processed in connection with this Agreement ("MuTu Data"):

15.1.1 process the MuTu Data in accordance with the Data Protection Act 1998 (1998 Act) and any other applicable data protection legislation;

15.1.2 process the MuTu Data only so far as is necessary for the purpose of performing its obligations under this Agreement;

15.1.3 not disclose or allow access to MuTu Data other than by its employees or third parties engaged to perform obligations pursuant to this Agreement, and ensure that such employees or third parties are subject to written contractual obligations concerning the MuTu Data which are no less onerous than those imposed by this Agreement; and

15.1.4 assist the other party to comply with such obligations as are imposed on that party by the 1998 Act. This includes the obligation to:

(a) provide the other party with reasonable assistance in complying with any subject access request served under section 7 of the 1998 Act;

(b) promptly inform the other party about the receipt of any subject access request;

(c) not disclose or release any MuTu Data in response to a subject access request without first consulting with and obtaining the consent of the other party; and

(d) give notice to any data subject whose personal data may be processed under this Agreement (including prospective customers as well as those with whom it enters into contracts) of such processing. This includes giving notice that, on the termination of this Agreement, personal data relating to them (including personal data contained in any customer list) may be retained by or, as the case may be, transferred to the other party. In addition, each party shall obtain any necessary consents for such processing under the 1998 Act. To ensure that the 1998 Act is complied with, each party agrees to allow the other to approve and, if the other party deems necessary, to amend any notices given to data subjects in relation to the MuTu Data.

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- 15.2 Where one party (data processor) acts as data processor on behalf of the other (data controller) in relation to the MuTu Data, the data processor shall :
- 15.2.1 maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the data controller by the seventh data protection principle set out in the 1998 Act; and
- 15.2.2 only process MuTu Data for and on behalf of the data controller for the purpose of performing its obligations under, and in accordance with, this Agreement and only on written instructions from the data controller to ensure compliance with the 1998 Act.
- 15.3 Each party agrees to provide the other with contact details of at least one employee as point of contact for all issues arising out of the 1998 Act.
- 15.4 Each party shall indemnify the other against all claims and proceedings and all liability, loss, costs and expenses incurred by the other as a result of any claim made or brought by a data subject or other legal person in respect of any loss, damage or distress caused to them as a result of that party's unauthorised processing, unlawful processing, destruction of and/or damage to any MuTu Data processed by that party, its employees or agents.
- 15.5 In this clause data controller, data processor, data subject, personal data and processing shall have the same meanings as set out in the 1998 Act, and process shall be construed accordingly.

16. **ASSIGNMENT**

- 16.1 This Agreement is personal to you and you may not, without the prior written consent of MuTu, assign, transfer, mortgage, charge, sub-licence, sub-contract, delegate or deal in any other manner with:
- 16.1.1 this Agreement or any of their rights and obligations under it (or any document referred to in it); or
- 16.1.2 your Business,
- or purport to do any of the same.
- 16.2 MuTu may, at any time, assign (absolutely or by way of security and in whole or in part), transfer, mortgage, charge or deal in any other manner with the benefit of any or all of any other party's obligations or any benefit arising under this Agreement.
- 16.3 Each party to this Agreement is acting on its own behalf and not for the benefit of another person.

17. **PAYMENTS**

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17.1 **No set-off.** All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

18. **LIMITATION OF LIABILITY**

18.1 **Unlimited liability.** Nothing in this Agreement shall limit or exclude the liability of either party for:

18.1.1 Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable).

18.1.2 Fraud or fraudulent misrepresentation.

18.1.3 Any matter in respect of which it would be unlawful to exclude or restrict liability.

18.2 **Limitations of liability.** Subject to clause 18.1 above:

18.2.1 Neither party shall under any circumstances whatsoever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

(a) any loss of profit, revenue, or anticipated savings; or

(b) any loss that is an indirect or secondary consequence of any act or omission of the party in question; and

18.2.2 The total liability of either party to the other in respect of all other loss or damage arising under or in connection with this Agreement excluding liability arising in connection with the supply of Products or other goods in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £500,000.00 for the entire term of this Agreement.

19. **GENERAL**

19.1 **Force Majeure.** Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this Agreement by giving 14days' written notice to the affected party.

19.2 **Further assurance.** Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement.

19.3 Confidentiality.

19.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 19.3.2.

19.3.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under this Agreement. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 19.3.2; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

19.3.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

19.4 Entire agreement.

19.4.1 This Agreement, the Brand Guidelines, and any documents referred to in this Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

19.4.2 If there is an inconsistency between the terms of this Agreement and the Brand Guidelines, or any other documents referred to in this Agreement, the terms of this Agreement shall prevail.

19.5 **Variation.** MuTu may in its absolute discretion choose to vary these terms. Any such variation shall be notified to you in advance of the variation taking effect. You shall notify MuTu of any objections you have to the variation within 14 days of the date of that notification. If the parties cannot agree the variation in good faith discussions, both parties shall have the right to terminate this agreement immediately.

19.6 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

19.6.1 Waive that or any other right or remedy.

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- 19.6.2 Prevent or restrict the further exercise of that or any other right or remedy.
- 19.7 **Severance.** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 19.8 **Notices.**
- 19.8.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- 19.8.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 19.8.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- 19.8.3 This clause shall not apply to the service of any proceedings or other documents in any legal action, arbitration or other method of dispute resolution.
- 19.9 **Third party rights.** No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 19.10 **Rights and remedies.** The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 19.11 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.
- 19.12 **No partnership or agency.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

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19.13 **Governing law.** 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 law of England and Wales.

19.14 **Jurisdiction.** 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).

IN WITNESS of which this agreement type has been executed and is delivered on the date appearing as the date of this agreement type.

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

OF TERMS IN THIS AGREEMENT

20. INTERPRETATION

20.1 **Definitions and Interpretation.** The definitions and rules of interpretation in this clause apply in this Agreement.

"Brand Guidelines"	the guidelines setting out how a MuTu Pro should use the Intellectual Property of MuTu compiled by MuTu, as updated from time to time by MuTu, as detailed at Schedule 3.
"Business Day"	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
"Business Hours"	the period from 9.00 am to 5.00 pm on any Business Day.
"Confidential Information"	any information which is disclosed by one party to the other pursuant to, or in connection with, this Agreement (whether orally or in writing and whether or not such information is expressly stated to be confidential), or which otherwise comes into the hands of one of the parties in relation to the MuTu System, your Business, the System, the Services or the Products, other than information which is already in the public domain (otherwise than as a result of a breach of any obligation of confidentiality).
"Course Materials"	hardcopy and/or digital materials in whatever format supplied relating to the teaching of the MuTu System provided by MuTU at or before the Initial Training, as may be updated by MuTu from time to time.
"Day"	a period of 24 consecutive hours ending at 12.00 midnight.
"Initial Term"	the term referred to in clause 2.1.
"Intellectual Property"	patents, rights to inventions, copyright and related rights, rights in software, trade marks, business

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names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world relating to the Products, Services, MuTu System and the System, owned by MuTu or acquired by MuTu from time to time.

"Mandatory Polices"	MuTu's mandatory policies and procedures, as amended by notification to you from time to time.
"MuTu Pro"	a person who teaches end users the MuTu System.
"MuTu System"	the business format and personal training method developed and implemented by MuTu using the Intellectual Property, Confidential Information, operational procedures, plans, directions, specifications, methods, management, marketing and advertising techniques.
"Products"	the products described on the Website and branded as MuTu products as may, from time to time, be amended or updated.
"your Profile"	a profile listing on the official list of MuTu Pros on the Website listing you as MuTu Pro in your geographical area and enabling your Business to be found on the Website by end users, with a link to your business website or Facebook page.
"Relevant Profession"	is a personal trainer, fitness instructor, pilates teacher, yoga teacher, midwife, physical therapist, physiotherapist, or doula. Other professions connected with health or medicine may be considered a Relevant Profession by MuTu if submitted in writing to MuTu prior to signing up for the Initial Training.

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"Renewed Term"	any term of this Agreement following a renewal under the provisions of clause 2.2.
"Restricted Business"	any business of MuTu or any other MuTu Pro that is similar to your Business.
"Restricted Customer"	any firm, company or person who, during the 6 months prior to the date of termination of this Agreement, was a customer of your Business.
"Sales Tax"	any sales tax applicable to Your Business and any similar replacement or additional tax.
"Services"	the specialised services of a MuTu Pro developed by MuTu to be used in, or supplied by, your Business as further described in the Course Materials.
"Stationery"	all letterheads, invoices, order forms and other documents approved by MuTu from time to time to be used by you for the purpose of your Business.
"Term"	the Initial Term of this Agreement and any Renewed Term under clause 2.
"Trade Marks"	the trade marks, both registered and unregistered and service marks set out in Schedule 2 and any other trade marks registered by MuTu in relation to the MuTu System from time to time during the Term.
"Website"	www.mutustystem.com
"week"	any period of seven consecutive days.
"year"	any period of 12 consecutive months 1 January to the following 31 December.
"Your Business"	being a MuTu Pro as carried on by you under this Agreement.
20.2	Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
20.3	A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
20.4	The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

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- 20.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 20.6 Words in the singular shall include the plural and vice versa.
- 20.7 A reference to one gender shall include a reference to the other genders.
- 20.8 This Agreement shall be binding on, and be for the benefit of, the parties to this Agreement and their respective personal representatives, successors, and permitted assigns. A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 20.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, and shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 20.10 A reference to **writing** or **written** includes fax and email.
- 20.11 References to clauses and Schedules are to the clauses and Schedules of this Agreement; references to paragraphs are to paragraphs of the relevant Schedule.
- 20.12 Where any statement is qualified by the expression **so far as [PARTY] is aware or to [PARTY]'s knowledge** (or any similar expression), that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 20.13 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 20.14 Any obligation in this Agreement not to do something includes an obligation not to agree or allow that thing to be done.

SCHEDULE 2
THE TRADE MARKS

MuTu registered trade marks

Registered Trade Mark	Registered Trade Mark Number	Territory of registration	Classes covered by specification
MUTU MAMAS	014813406	EU	9, 16, 25, 27, 28, 35, 41
MUTU	014813372	EU	9, 16, 25, 27, 28, 35, 41

MuTu System Limited also has licence to use the following registered trade marks:-

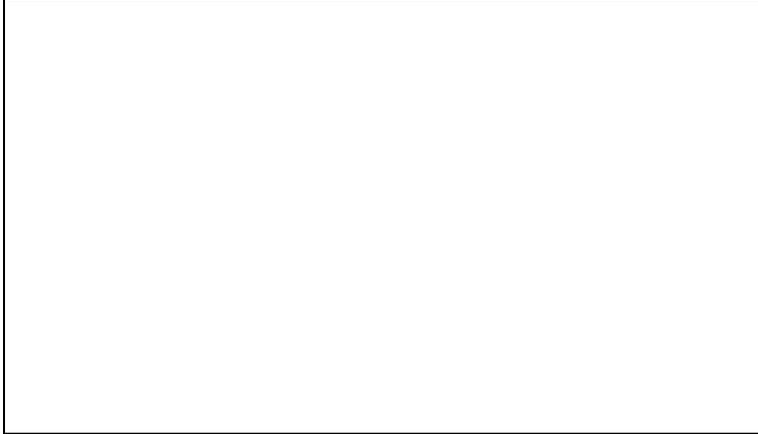
Registered Trade Mark	Registered Trade Mark Number	Territory of registration	Classes covered by specification
MuTu	2639817	UK	9, 16
MuTu	2553016	UK	41
MUTU	4480123	US	9, 16, 41

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SCHEDULE 3

PAYMENT

[Fees to be agreed on sign-up as a MuTu Pro]

A large, empty rectangular box with a thin black border, intended for listing fees to be agreed upon during sign-up as a MuTu Pro.

All payments to be made in US dollars unless indication otherwise by MuTu.

SCHEDULE 4

MuTu PRO™ IP GUIDELINES

Welcome to MuTu Pro. We want to help you understand how you can use our brand. This guide should be read alongside our Terms of Participation which you have agreed to.

A brand forms a major part of any company's value, and misuse of a brand (whether intentional or not) can land you in an expensive legal process. We take measures to protect and strengthen our brand, which also benefits you as a MuTu Pro by protecting and strengthening the reputation of your certification. We ask that you remain mindful of these brand guidelines, as even when no harm is intended, misuse can weaken and devalue the strength of our brand.

Our trade marks, brand names, logos, images, graphics and infographics all form part of our brand and are owned by MuTu. These must not be used in any way except in accordance with this guide.

Don't worry, the following pages will help you know exactly how you can and can't use our brand, and if you have any questions at any time, we're here to help! Just email pro@mutusystem.com

MuTu TRADE MARKS

MuTu System owns both registered and unregistered trade marks around the world. A full list of these can be found in the Schedules to the Terms of Participation. Where we have established unregistered trade marks the MuTu brand is used as a prefix.

The appropriate symbol should always be used when writing these terms:

- **If you use one of our registered trade marks you must use the ® symbol directly next to the registered trade mark as indicated here:**

Examples of registered trade marks: "MuTu®", "MuTu Mamas®"

- **If you use one of our unregistered trade marks you must use the ™ symbol directly next to the unregistered trade mark as indicated here:**

Examples of unregistered trade marks: MuTu System™, MuTu Focus™, MuTu Pro™.

MuTu CONTENT

The MuTu System programs, as well as all materials and resources that accompany them, are all copyright works. We allow current, certified MuTu Pros to use some of this material, but with no editing rights. All audio, visual and textual content of our programs, all text, images and videos on our websites and numerous other creations and productions are all copyright materials. Considerable creative, financial, legal and production investment has gone into these works which form some of the most important assets of our organization, and so we must ensure that these works are not used improperly or without permission.

As a MuTu Pro, you are allowed to use the handouts given to you by us in your business for your own study and to provide end users (i.e. customers) with copies of the handouts or part

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of them, provided you always display the copyright notice clearly visible at the bottom of the document and on every page. It looks like this:

“© MuTu System Limited | Reprinted with permission”

You must not use our trade marks or copyright material in any way other than to refer to our brand or program. You cannot publish, post, share, duplicate or adapt our copyright materials on the internet or other avenues (including but not limited to Dropbox, Evernote or Facebook) without our explicit written permission.

HOW TO USE AND HOW NOT TO USE OUR BRAND

As a certified MuTu Pro we want to support and promote you! When you are referring to MuTu System, please follow these rules:

- always use the appropriate symbol (® or ™) on the first use of each trade mark within your website page, email or any other material as more particularly described in the Trade Marks section above
- MuTu is always written with a capital “M” and capital “T”. Not all caps (MUTU) or only the first letter capped (Mutu). It’s MuTu System (singular), not MuTu Systems (plural)
- if you are using the trade marks multiple times and don’t include the symbol on every reference, you must attribute ownership as a credit on your website or material: e.g. “MuTu® is a trade mark of MuTu System Limited”
- never use the trademarks in all lowercase letters (e.g. “mutu system”) except when referencing the website URL
- copyright content (other than the handouts that form part of your certification) cannot be used without first obtaining explicit permission from us. Where permission has been granted, you should attribute copyright as such: “ © MuTu System Limited | Reprinted with permission” or where your own material is also present, as such: "Content on this webpage/document contains the copyrighted material of MuTu System Limited © 2016. Used with permission"
- if you publish our infographics or images, they must be reproduced exactly in their original form, including copyright water mark and only with our express written permission to reproduce

BUT KEEP THESE RULES IN MIND:

- don’t use your trade marks or business name in a way that suggests MuTu System is providing your services, rather than you
- you may not cause or act in any way that confuses potential customers or website visitors as to the source of your services (i.e. using our brand to promote your own products or services by implying they originate from MuTu System
- your company or services should bear a name unique to you and that does not include our trademarks. You may not advertise any of your services where you are not practicing as a MuTu Pro as ‘MuTu System approved’, ‘endorsed’, or as a ‘partner’ of MuTu System
- you may not use our trade marks within a domain or sub-domain of your website whether or not you have added additional letters or characters e.g. joebloggsmutusystem.com
- you may not use MuTu System trade marks in your business name or as a trade mark for your services
- you may not use any misspellings or variations of our trade marks or any marks which are confusingly similar

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- you may not bid on or use any MuTu System branded words, trade marks or keywords (including misspellings) in any online advertising, or engage in any PPC advertising at all, driving traffic to our sites via affiliate or other links
- MuTu Pros running PPC campaigns using MuTu System affiliate links will be immediately removed from our affiliate program. This includes all SEO, whether paid or unpaid
- you may not use our brand in any negative way, or any way that portrays MuTu System or any of our employees or representatives in a negative way

MuTu PRO BADGE

As a MuTu Pro you will be free to display the MuTu Pro badge when offering your services. Here is a little guidance to ensure the badge looks its best:

- Please do not make ANY changes to the badge
- Please ensure proportions are restrained and the logo is not squished or stretched in any way
- You will be supplied with the logo in varying sizes bot for digital use (i.e. on your website) and for use within printed materials. Please use the logos at the size provided (unless you have our express permission to do otherwise)
- Please leave space around the badge to ensure the badge is not clutter
- Do not apply effects such as shadows to the badge.

ADVERTISING YOUR CLASS/SESSION

The MuTu Pro certification is intended to provide resources and knowledge to compliment your existing qualifications and profession.

Under the MuTu Pro agreement, you have two options for putting your MuTu Pro certification into practice:

1. Use the MuTu Pro training to influence and educate your own practice and teachings to clients, weaving elements of the MuTu System into your existing professional services. Here are some rules that must be followed in order to protect the brand;
 - a) You must use the subtext of 'With a MuTu Pro' or 'MuTu Pro Certified' when you are advertising your own services. This may be written as plain text or represented using the graphic exactly as provided (for example see above)

Or

2. Teach the MuTu System exactly as laid out in the MuTu Pro training and our online programs,

In the event you decide to teach the MuTu System as the 12 week programs (i.e. option 2 above) then there are some rules that must be followed in order to protect the brand:

- a) you may call your sessions or classes 'The MuTu System with a certified MuTu Pro' only. This may be written as plain text or represented using the graphic exactly as provided;
- b) the classes you teach must be free from any variation in content or progression from the existing 12 Week or Focus program; and
- c) your clients are required to purchase the relevant online program to compliment this category of training with you.