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GIVEPANEL MANAGED SERVICES TERMS AND CONDITIONS (EU/UK)

Agreed Terms

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

- 1 **Charges:** the charges payable by the Customer for the supply of the Managed Services in accordance with clause 4.
- 2 **Commencement Date:** Proposal as specified in the Proposal.
- 3 **Contract:** the contract between GivePanel and the Customer for the supply of Managed Services in accordance with these Conditions.
- 4 **Customer Data:** the data inputted by the Customer, Authorised Users, or GivePanel on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
- 5 **Managed Services:** the services supplied by GivePanel to the Customer as set out in the Proposal.
- 6 **Managed Services Fees:** the fees payable to GivePanel for the performance of the Managed Services.
- 7 **Managed Services Term:** has the meaning given in clause 8.1.
- 8 **Proposal:** the document outlining what is included within the Managed Services and the service levels, if any, to which GivePanel will provide the Managed Services.
- 9 **Software:** the online software applications provided by GivePanel as part of the Subscription Services.
- 10 **Subscription Services:** the subscription services provided by GivePanel to the Customer, under the Subscription Services Terms, via app.givepanel.com or any other website notified to the Customer by GivePanel from time to time, including any documentation provided to the Customer via the Subscription Services.
- 11 **Subscription Services Terms:** the terms and conditions for the supply of the Subscription Services.

2. Supply of Managed Services

2.1 GivePanel shall

- (a) supply the Managed Services to the Customer in accordance with the Proposal in all material respects;
- (b) use all reasonable endeavours to meet any performance dates specified in the Proposal, or agreed between the parties from time to time, but any such dates shall be estimates only and time shall not be of the essence for performance of the Managed Services;
- (c) report to the Customer, on a regular basis, as to the delivery of the Managed Services and the performance of the Managed Services against the Proposal, any forecasts, estimates or budgets;
- (d) ensure that any passwords, security access information, or infrastructure that is provided to GivePanel to enable it to perform the Managed Services are used for the provision of the Managed Services only, and are used in accordance with any relevant, and reasonable, policies of the Customer's relating to their use.

2.2 The Customer understands and agrees that, unless clearly stated in writing, GivePanel does not guarantee any specific results, returns or profitability from the Managed Services and, save for as outlined elsewhere in this Contract, GivePanel shall have no liability to the Customer for the results obtained from the Managed Services.

2.3 GivePanel reserves the right to amend the Proposal if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Managed Services, and GivePanel shall notify the Customer in any such event.

2.4 GivePanel warrants to the Customer that the Managed Services will be provided using reasonable care and skill.

2.5 For the avoidance of all doubt, GivePanel will not be able to provide the Managed Services where the Customer does not have a valid and subsisting subscription for the Subscription Services.

3. Customer's obligations

3.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Proposal are complete and accurate;
- (b) provide GivePanel with all necessary access to such information as may be reasonably required by GivePanel,

- (c) co-operate with GivePanel in all matters relating to the Managed Services;
 - (d) not allow any of its Authorised Users to make use of the Subscription Services in any way that may have an effect on GivePanel's ability to deliver the Managed Services, or that will have a detrimental effect on any Managed Services already provided; and
 - (e) carry out all other Customer responsibilities set out in these terms in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, GivePanel may adjust any timetable or delivery schedule as reasonably necessary
 - (f) provide GivePanel with such information and materials as GivePanel may reasonably require in order to supply the Managed Services, and ensure that such information is complete and accurate in all material respects;
 - (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Managed Services before the date on which the Managed Services are to start;
- 3.2 If GivePanel's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, GivePanel shall have the right to suspend performance of the Managed Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays GivePanel's performance of any of its obligations;
 - (b) GivePanel shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from GivePanel's failure or delay to perform any of its obligations as set out in this clause 3.2; and
 - (c) the Customer shall reimburse GivePanel on written demand for any costs or losses sustained or incurred by GivePanel arising directly or indirectly from the Customer Default.

4. Charges and payment

- 4.1 The Customer shall pay the Managed Services Fees to GivePanel for the Managed Services in accordance with the terms set out in the Proposal.
- 4.2 Unless otherwise outlined in the Proposal, all Managed Services Fees shall be paid within 14 days of any invoice for them.
- 4.3 In the absence of payment terms in the Proposal, All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by GivePanel to the Customer, the Customer shall, on receipt of a valid VAT invoice from GivePanel, pay to GivePanel such additional amounts in respect of VAT as are chargeable on the supply of the Managed Services at the same time as payment is due for the supply of the Managed Services.
- 4.4 If the Customer fails to make a payment due to GivePanel under the Contract by the due date, then, without limiting GivePanel's remedies under clause 8:
- (a) GivePanel shall, upon notice to the Customer, be entitled to suspend the performance of the Managed Services; and
 - (b) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 4.4 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 4.5 All amounts due under the Contract 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).

5. Proprietary Rights

- 5.1 The Customer acknowledges and agrees that GivePanel and/or its licensors own all intellectual property rights in the Subscription Services and the Software. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Subscription Services.
- 5.2 GivePanel confirms that it has all the rights in relation to the Subscription Services and Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

6. Customer data

- 6.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 6.2 GivePanel shall, in providing the Managed Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at <https://givepanel.com/privacy> or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by GivePanel in its sole discretion.

- 6.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 6.4 The parties acknowledge that:
- (a) if GivePanel processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the controller and GivePanel is the processor for the purposes of the Data Protection Legislation.
 - (b) the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and GivePanel's other obligations under this agreement.
- 6.5 Without prejudice to the generality of clause 6.3, the Customer will ensure that it has taken all necessary steps to ensure a lawful basis for processing (including any appropriate consents and notices) and to enable lawful transfer of the personal data to GivePanel for the duration and purposes of this agreement so that GivePanel may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.
- 6.6 Without prejudice to the generality of clause 6.3, GivePanel shall, in relation to any personal data processed in connection with the performance by GivePanel of its obligations under this agreement:
- (a) process that personal data only on the documented written instructions of the Customer unless GivePanel is required by the laws of any member of the European Union or by the laws of the European Union applicable to GivePanel and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where GivePanel is relying on Applicable Laws as the basis for processing personal data, GivePanel shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit GivePanel from so notifying the Customer;
 - (b) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
 - (i) the Customer or GivePanel has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) GivePanel complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) GivePanel complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
 - (c) assist the Customer, at the Customer's reasonable cost, in responding to any request from a data subject to exercise any of their rights as enshrined in Articles 12 to 22 (inclusive) of the General Data Protection Regulation (EU) 2016/679, and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (d) notify the Customer without undue delay on becoming aware of a personal data breach;
 - (e) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and
 - (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 6 and immediately inform the Customer if, in the opinion of GivePanel, an instruction infringes the Data Protection Legislation.
- 6.7 Each party shall ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 6.8 The Customer consents to GivePanel appointing third-party processors of personal data under this agreement. GivePanel confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 6. As between the Customer and GivePanel, GivePanel shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.

6.9 GivePanel may, at any time on not less than 30 days' notice, revise this clause 6 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

7. Limitation of liability:

7.1 Except as expressly and specifically provided in this agreement:

- (a) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (b) the Managed Services are provided to the Customer on an "as is" basis.

7.2 Nothing in this agreement excludes the liability of GivePanel:

- (a) for death or personal injury caused by GivePanel's negligence; or
- (b) for fraud or fraudulent misrepresentation.

7.3 Subject to clause 7.1 and clause 7.2:

- (a) GivePanel shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) GivePanel's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Managed Services Fees paid.

8. Term and Termination

8.1 The Managed Services shall commence on the Managed Services Commencement Date and, unless otherwise agreed between the parties shall automatically terminate at the end of the fixed term period outlined in the Proposal.

8.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party 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 the other party's assets and such attachment or process is not discharged within 14 days; or
- (k) 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 14.2(d) to clause 14.2(j) (inclusive); or

- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 8.3 For the avoidance of all doubt, the termination or expiry of the Subscription Services shall result in the automatic, simultaneous, termination of the provision of the Managed Services.
- 8.4 All amounts and fees stated or referred to in this agreement:
- (a) Shall, unless otherwise agreed in writing, be payable in GBP;
 - (b) Are non-cancellable and non-refundable;
 - (c) are, unless otherwise agreed, exclusive of any value added tax, which may be applicable to GivePanel's invoice(s) at the appropriate rate.

9. Consequences of termination

9.1 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the GivePanel shall immediately cease providing the Managed Services;
- (b) each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party;
- (c) GivePanel may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with clause 6.6(c), unless GivePanel receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. GivePanel shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by GivePanel in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

10. Force majeure

GivePanel shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of GivePanel or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

11. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

14. Severance

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

15. Entire agreement

15.1 This agreement, together with the Subscription Services Terms, 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.

15.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

15.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

16. Assignment

16.1 The Customer shall not, without the prior written consent of GivePanel, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

16.2 GivePanel may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

17. No partnership or agency

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

18. Third party rights

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

19. Notices

19.1 Any notice required to be given under this agreement shall be in writing and shall be sent by email to the email addresses provided on the Sign-up Page.

19.2 Notice sent by email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

20. Governing law and Jurisdiction

20.1 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.

20.2 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).