

TERMS & CONDITIONS

These Conditions and our Engagement Letter (together the **Agreement**) set out the basis on which The Total Package Limited (**we, us, our**) will provide the Services to you, and shall apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1 INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply **Agreement:** means the Engagement Letter and these Conditions.

Client Materials: all documents, information and materials (in any form) provided by you in connection with the Services.

Commencement Date: the date of our Engagement Letter.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.

Consultant Materials: all documents, information and materials (in any form) provided by us relating to the Services, other than the Deliverables.

Consultancy Services: means the services described in a relevant Consultancy Services Quotation.

Consultancy Services Quotation: means a quotation, agreed in accordance with clause 2, describing the Consultancy Services to be provided by us.

Data Protection Law: means (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

Deliverables: any deliverables we agree to provide you as part of the Services.

Engagement: our engagement, by you, on the terms of the Agreement.

Engagement Letter: the letter we sent to you setting out the basis upon which we shall carry out the Services for you.

Fee(s): means the Support Services Fees, the Maintenance and Monitoring Services Fees, and the Consultancy Services Fees.

GDPR: means General Data Protection Regulation ((EU) 2016/679).

Intellectual Property Rights: all intellectual property rights howsoever arising and in whatever media, whether or not registered or capable of registration, including (without limitation) copyright, database rights, patents, service marks, trade marks (whether registered or not), trade names, registered design rights, unregistered design rights, domain names, know-how, confidential information and any applications for the protection or registration of these rights and all

renewals and extensions of them throughout the world.

Maintenance and Monitoring Services: the maintenance and monitoring services, as set out in the Engagement Letter.

Maintenance and Monitoring Services Fees: our fees for the supply of the Monitoring and Maintenance Services, as set out in the Engagement Letter.

Services: means the Support Services, the Maintenance and Monitoring Services, the Consultancy Services, and any relevant Deliverables, and such other services as we may agree to provide you in writing from time to time.

Support Services: the support services as set out in the Engagement Letter.

Support Services Fees: our fees for the supply of the Support Services, as set out in the Engagement Letter.

Third Party Software: any software programs proprietary to third parties which are provided to you under this Agreement as part of the Services.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 The headings in these Conditions are inserted for convenience only and shall not affect their construction.

1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2 CONSULTANCY SERVICES QUOTATION

2.1 Any Consultancy Services to be provided by us to you shall be provided in all material respects in accordance with a Consultancy Services Quotation agreed as follows:

2.1.1 you may request, and we may recommend, Consultancy Services. Where you request Consultancy Services, we shall promptly provide you with a Consultancy Services Quotation setting out the information detailed below. Where we propose any Consultancy Services we shall submit an appropriate Consultancy Services Quotation to you. Each Consultancy Services Quotation shall set out:

2.1.1.1 the Consultancy Services to be provided (including any relevant Deliverables);

2.1.1.2 any timings, location and deadlines for the provision of such Consultancy Services (where such information is not yet known, such information shall be agreed in writing between the parties in due course);

2.1.1.3 the associated cost of such Consultancy Services; and

2.1.1.4 any other relevant information relating to the Consultancy Services.

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- 2.1.2 following receipt of the Consultancy Services Quotation, you shall consider it and as appropriate:
- 2.1.2.1 request further information;
 - 2.1.2.2 notify us in writing that you accept the Consultancy Services Quotation; or
 - 2.1.2.3 notify us of any amendments you wish to make to the Consultancy Services Quotation, in which case the parties will work together in good faith to agree any amendments which are required to the Consultancy Services Quotation. If no agreement can be reached we shall have the final say on the amendments to be made to a Consultancy Services Quotation.
- 2.2 Only once the Consultancy Services Quotation has been agreed in accordance with clause 2.1 shall the Consultancy Services Quotation become binding on both parties.
- 2.3 Each Consultancy Services Quotation shall be governed by these Conditions and each Consultancy Services Quotation shall be a separate contract between the parties.
- 3 OUR OBLIGATIONS**
- 3.1 We shall:
- 3.1.1 provide the Services with all due care, skill and ability;
 - 3.1.2 use reasonable endeavours to meet any performance dates agreed between us (whether in writing or otherwise), but any such dates shall be estimates only and time for performance shall not be of the essence;
 - 3.1.3 promptly give to you all such information and reports as we may reasonably require in connection with matters relating to the provision of the Services;
 - 3.1.4 comply with any usage or other applicable licence restrictions in relation to any software provided by you and to which we have access which are notified to us by you from time to time; and
 - 3.1.5 obtain your prior approval before providing any Third Party Software to you as part of the Services;
- 3.2 We will comply with all reasonable standards of safety and comply with your health and safety procedures (as notified to us) from time to time in force at the premises where the Services are provided and report to you any unsafe working conditions or practices.
- 3.3 Where we provide Third Party Software to you as part of the Services (or as otherwise agreed in writing), we provide such Third Party Software to you under the standard licence terms provided by the relevant third parties (copies of which will be provided to you upon request), and the only warranties in relation to the Third-Party Software or the supply thereof are those contained in the licence terms from the third-party supplier(s) of the same, and that to the extent that any of such warranties are given to us, we will pass on the benefit of such warranties to you.
- 3.4 Where we are given access to your IT network unsupervised to enable us to carry out relevant Services, we shall not provide such access to any third party (excluding any official agents and/or independent contractor of ours) without our direct supervision and your prior written consent.
- 3.5 Where we connect to your IT network we shall only do so as required by us to carry out relevant Services.
- 4 YOUR OBLIGATIONS**
- 4.1 You will:
- 4.1.1 co-operate with us in all matters relating to the Services;
 - 4.1.2 provide us, in a timely manner and at no charge, access to your premises, office accommodation, data and other facilities as we reasonably require;
 - 4.1.3 provide, in a timely manner, such Client Material and other information as we may reasonably require, and ensure that it is accurate in all material respects;
 - 4.1.4 be responsible (at your own cost) for preparing and maintaining the relevant premises for the supply of the Services;
 - 4.1.5 inform us of all health and safety rules and regulations and any other reasonable security requirements that apply at any of your premises;
 - 4.1.6 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the use of Client Material in all cases before the date on which the Services are to start.
- 4.2 If Third Party Software is supplied under a Quotation you shall use all Third Party Software in accordance with applicable licence terms granted by the supplier of such software and will indemnify and hold us harmless against any loss of damage which we may suffer or incur as a result of your breach of such licence terms howsoever arising.
- 4.3 If performance of our obligations under this Agreement is prevented or delayed by any act or omission by you, your agents, subcontractors, consultants or employees, we will not be liable for any costs, charges or losses sustained or incurred by you that arise directly or indirectly from such prevention or delay.
- 5 FEES, DEPOSIT, TRAVEL AND EXPENSES**
- 5.1 In consideration of the provision of our Services, you will pay the Fees.
- 5.2 We shall invoice you as follows:
- 5.2.1 for the Support Services Fees and the Maintenance and Monitoring Services Fees, at the intervals specified in the Engagement Letter; and
 - 5.2.2 for the Consultancy Services Fees, at the intervals specified in the relevant Consultancy Services Quotation, or in the absence of such intervals, at the end of each month for the Consultancy Services performed during that month,
- or as otherwise agreed between the parties in writing.
- 5.3 You shall pay each invoice for the Support Services Fees and Maintenance and Monitoring Fees in accordance with the payment terms set out in the Engagement Letter.
- 5.4 You shall pay each invoice for Consultancy Services Fees submitted to you in full and cleared funds within 14 days of the date of the relevant invoice to a bank account nominated in writing by us from time to time.
- 5.5 The Fees exclude the following which shall be payable by you in addition to the Fees:
- 5.5.1 hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by us in connection with the Services (travel time and mileage shall be charged at the following rates or such other rates as we may notify you from time to time in writing: to travel to site, or on your behalf, we charge travel expenses after the first hour and 25 miles in each direction; travel time is charged at £75 per hour and mileage at £0.50 per additional mile); and/or
 - 5.5.2 any materials and services (including Third Party Software) reasonably and properly provided by third parties and required by us for the supply of the Services. We will invoice such expenses, third party materials and services to you. You will pay such invoices in accordance with the terms stated therein.

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- 5.6 Without prejudice to any other right or remedy that it may have, if you fail to pay us any sum due under the Agreement on the due date, we may:
- 5.6.1 charge interest on the overdue amount from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at the rate of 4% per annum above the Bank of England's base rate from time. You shall pay the interest together with the overdue amount; and/or
- 5.6.2 suspend all or part of the Services until payment has been made in full; and/or
- 5.6.3 terminate the provision of the Services to you.
- 5.7 All sums payable to us under the Agreement are exclusive of value added tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes is made by us under the Agreement, you shall, on delivery of a VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.8 You shall pay all amounts due under the Agreement without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). We may at any time, without limiting its other rights or remedies, set-off any amount owing to us by you against any amount payable by us to you.
- 5.9 Where Consultancy Services Fees are over £1000 we may require a deposit to be paid by you, the details of which (including payment terms) shall be detailed in the applicable Consultancy Services Quotation.
- 6 CONFIDENTIALITY**
- 6.1 Each party undertakes to the other not to, at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (**Confidential Information**), except as permitted by clause 6.2.
- 6.2 Each party may disclose the other party's Confidential Information:
- 6.2.1 to its employees, officers, agents, consultants or subcontractors (**Representatives**) who need to know such information for the purposes of carrying out its obligations under the Agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 6 as though they were a party to the Agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and
- 6.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 6.3 Each party reserve all rights in its own Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in the Agreement are granted to the other party are to be implied from the Agreement. In particular, no licence is hereby granted directly or indirectly under any Intellectual Property Right held, made, obtained or licensable by either party now or in the future.
- 7 INTELLECTUAL PROPERTY**
- 7.1 Unless otherwise agreed in writing between us, all Intellectual Property Rights and all other rights in the Deliverables and the Consultant Materials shall be owned by us. Subject to clause 7.2, we license all such rights to you free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable you to make reasonable use of the Deliverables and the Services. If we terminate the Agreement under clause 10 this licence will automatically terminate.
- 7.2 You acknowledge that, where we do not own any of the Consultant Materials, your use of rights in the Consultant Materials is conditional on us obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle us to license such rights to you.
- 7.3 For the avoidance of doubt all Intellectual Property Rights and all other rights in the Client Materials shall be owned by you and you license all such rights to us free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable us to provide the Services.
- 8 DATA PROTECTION**
- 8.1 Both parties will comply with all applicable requirements of the Data Protection Law. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Law.
- 8.2 Without prejudice to the generality of clause 8.1, you will ensure that you have all necessary consents and notices in place to enable lawful transfer of the personal data to us for the duration and purposes of the Agreement.
- 8.3 Without prejudice to the generality of clause 8.1, we shall each, where we act as data controller with regard to personal data provided to us by you, only do so only so far as is necessary to carry out our obligations under the Agreement or as otherwise permitted by Data Protection Law.
- 8.4 Without prejudice to the generality of clause 8.1, we shall, where we act as a data processor on your behalf (further details of which shall be provided to you as follows: if applicable to our provision of Support Services and/or Maintenance and Monitoring Services, by us filling out and sending to you the template form attached at Schedule 1 to these Conditions; and if applicable to our provision of Consultancy Services, as set out in the applicable Consultancy Services Quotation, or, where appropriate, such other document as we may notify you from time to time):
- 8.4.1 process that personal data only on your written instructions (and you hereby instruct us to process that personal data as required to perform our obligations under the Agreement) unless we are required by the laws of England and Wales or of any member of the European Union or by the laws of the European Union applicable to the Provider to process personal data (Applicable Laws). Where we are relying on Applicable Laws as the basis for processing personal data, we shall notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from so notifying you;
- 8.4.2 only appoint sub-processors as permitted under this addendum;
- 8.4.3 ensure that we have in place appropriate technical and organisational measures as required by Data Protection Law;
- 8.4.4 ensure that all of our personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- 8.4.5 not transfer any personal data outside of the European Union and the UK (Permitted Territory) unless it does so in accordance with Data Protection Law and your prior written authorisation has been obtained or such transfer

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is on your written instructions (and you hereby instruct and authorise us to transfer personal data outside the Permitted Territory where required for the provision of the Services, including but not limited to where personal data is accessed by or on behalf of yourself from outside the Permitted Territory, and where you have been notified that an authorised sub-processor is located or stores or accesses personal data outside the Permitted Territory);

- 8.4.6 taking into account the nature of the processing, assist you, at your cost, in responding to any request from a data subject (insofar as this is possible) and in ensuring compliance with your obligations under Data Protection Law with respect to (taking into account the information available to us) security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 8.4.7 notify you without undue delay on becoming aware of a personal data breach, and (with regard to its obligations under clause 8.4.9) immediately inform you if (in our opinion) an instruction of yours infringes Data Protection Law;
- 8.4.8 at your written direction, delete or return personal data and copies thereof to you on termination of the Agreement unless required by Applicable Law to store the personal data; and
- 8.4.9 make available to you all information necessary to demonstrate its compliance with this clause 8 and Data Protection Law (which shall remain our confidential information and which you shall not disclose or use other than to confirm our compliance with Data Protection Law) and allow for and contribute to audits by you or your designated auditor at your expense, on reasonable written notice during business hours and subject to such reasonable measures as we (or any sub-processor) requires in relation to its security and confidentiality requirements and not causing disruption to its business activities.
- 8.5 You specifically authorise the appointment of D.H. Consulting or such other person as may be identified to you by us in writing from time to time, and generally authorise us to appoint further or alternative sub-processors. Where we appoint or replace a sub-processor we shall notify you in advance of any intended changes concerning the addition or replacement of such sub-processors. If you wish to object to such changes, you must do so within 5 days of receiving such notice, by notifying us in writing accompanied by your reasons for such objection. Following any such objection, we may engage with you to provide alternatives or assurances in relation to such change. If you (acting reasonably in relation to your legal or regulatory compliance obligations) continue to object to such changes you may, within 30 days of receipt of the original notice, terminate on written notice without penalty the relevant services directly affected by that change. Where you do not provide written notice of such termination, or continue to use such services following the change, you shall be deemed to have accepted such change. We shall remain fully liable for all acts or omissions of any sub-processor engaged by us (and such engagements shall be on such sub-processors' terms of business which incorporate data protection obligations which are the same or more onerous in their effect as those set out in this clause 8).

9 LIMITATION OF LIABILITY

- 9.1 Nothing in the Agreement limits or excludes our liability for:

- 9.1.1 death or personal injury caused by our negligence;
- 9.1.2 fraud or fraudulent misrepresentation; or
- 9.1.3 any other liability which cannot be limited or excluded by applicable law.

- 9.2 Subject to clause 9.1, we will not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, loss of use or corruption of software, data or information or any indirect or consequential loss.

- 9.3 Subject to clause 9.1 and clause 9.2, our total liability to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to the Fees paid by you for the relevant Services to which the breach relates in the previous 12 month period.

10 TERM AND TERMINATION

Termination of a Consultancy Services Quotation

- 10.1 The Consultancy Services relevant to a Quotation shall commence on the commencement date stated therein and will continue until the applicable Consultancy Services have been delivered by us (or as otherwise agreed between the parties in writing), unless terminated earlier in accordance with this clause 10 or otherwise in accordance with the Agreement.
- 10.2 The parties may terminate a Consultancy Services Quotation at any time by mutual written agreement.
- 10.3 The grounds and procedures for terminating the Agreement as a whole specified in clause 10.7 onwards apply equally to a Consultancy Services Quotation but interpreted accordingly, and either party may terminate a Consultancy Services Quotation in accordance with such clauses.
- 10.4 Termination or expiry of a Consultancy Services Quotation shall not affect the validity of any other Consultancy Services Quotations or the Agreement then in force at the date of such termination or expiry, which shall continue in full force and affect.

Termination of the Agreement

- 10.5 This Agreement will commence on the Commencement Date and shall continue thereafter unless terminated earlier in accordance with this clause 10.
- 10.6 Either party may terminate this Agreement at anytime by giving not less than 3 months' written notice to the other party.
- 10.7 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may at any time terminate this Agreement with immediate effect by giving written notice to other party if:
- 10.7.1 the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
- 10.7.2 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.
- 10.8 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, we may at any time terminate this Agreement with immediate effect by giving written notice to if:
- 10.8.1 you suspend or cease, or threatens to suspend or cease, to carry on all or a substantial part of your business;

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- 10.8.2 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 you having the intention or ability to give effect to the terms of this Agreement.
- 10.9 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, we may at any time terminate this Agreement with immediate effect by giving written notice to you if you fail to pay any sums payable by you to us under this Agreement within 30 days of being reminded by us in writing that such sums are due.
- 11 OBLIGATIONS ON TERMINATION**
- 11.1 On termination or expiry of a Consultancy Services Quotation or the Agreement (as applicable and interpreted accordingly):
- 11.1.1 you will immediately pay to us all of our outstanding unpaid invoices and interest, and, in respect of relevant Services supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt; and
- 11.1.2 you shall return all of the Consultant Materials. Until they have been returned or repossessed, you shall be solely responsible for their safe keeping.
- 11.2 Termination or expiry of a Consultancy Services Quotation or the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement or Consultancy Services Quotation (as applicable) which existed at or before the date of termination or expiry.
- 11.3 On termination of this Agreement, each Consultancy Services Quotation then in force at the date of such termination shall continue in full force and effect for the remainder of the applicable Consultancy Services Quotation, unless earlier terminated in accordance with the terms of this Agreement or as otherwise agreed in writing.
- 11.4 On termination of this Agreement, unless such things are needed by it to perform its obligations under a Consultancy Services Quotation (and only until the end of such time), each party shall as soon as reasonably practicable after termination of this Agreement return or destroy (as directed in writing by the other party) any Confidential Information provided to it by the other party for the purposes of this Agreement. If reasonably required by the other party, it shall provide written evidence (in the form of a letter signed by it) that these have been destroyed and that it has not retained any copies of them.
- 12 STATUS**
- Our relationship to you will be that of independent contractor and nothing in the Agreement shall render us an employee, worker, agent or partner of you and we will not hold ourselves out as such.
- 13 FORCE MAJEURE**
- 13.1 The obligations of each party under the Agreement shall be suspended during the period and to the extent that that party is prevented or hindered from complying with them by any cause beyond its reasonable control, in connection with the performance of the Agreement.
- 13.2 In the event that the cause continues for more than 1 month either party may terminate the Agreement on 14 days' notice to the other.
- 14 ASSIGNMENT**
- You will not, without our prior written consent, assign, transfer, charge or deal in any other manner with the Agreement or your rights or obligations under it or part of it, or purport to do any of the same, nor sub-contract any or all of your obligations under the Agreement.
- 15 ENTIRE AGREEMENT**
- The Agreement constitutes the entire understanding between us with respect to the subject matter of the Agreement and supersedes all prior agreements, negotiations and discussions between us relating to it.
- 16 AMENDMENTS**
- No amendment or variation of the Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.
- 17 WAIVER**
- The failure of a party to exercise or enforce any right under the Agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.
- 18 SEVERABILITY**
- 18.1 If any provision of the Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 19 NOTICES**
- Any notice required to be given pursuant to the Agreement shall be in writing and shall be given by sending the same by pre-paid first class recorded delivery post or other next working day delivery service providing proof of postage and delivery, to the address of the relevant party set out in the Engagement Letter or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time recorded by the delivery service.
- 20 RIGHTS OF THIRD PARTIES**
- A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 21 GOVERNING LAW AND JURISDICTION**
- The Agreement shall be governed by and construed in accordance with English law and each party irrevocably submits to the exclusive jurisdiction of the English Courts.