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## **TOPSOURCE FOR TERMS AND CONDITIONS**

The Topsource Employer of Record ("EoR") Terms and Conditions are incorporated into and subject to the Agreement between TopSource Support Services Private Limited and the client entity that is a party to the Agreement ("the Client").

All capitalized terms not defined in these Conditions shall have the meanings set forth in the Order for Services Form or the Data Protection Provisions (as applicable).

### **1. Interpretation**

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

#### **1.1 Definitions**

**"Ad-hoc Services"** means services other than the Services as may be requested by the Client from time to time.

**"Ad-hoc Service fee"** means the fee for the provision of any Ad-hoc Services.

**"Affiliate"** shall mean any corporation, association, or other entity that directly or indirectly controls or owns, is owned by, or is under common ownership with either Party, respectively, either currently or during the validity of The Agreement. As used in this definition, the terms "controls", "owns", "owned", or "ownership" mean the direct or indirect possession of more than 50% of the voting securities, or equity in such business entity.

**"Agreement"** shall mean the agreement between TopSource and the Client for the supply of Services in accordance with:

- (a) these Conditions; and
- (b) the Order for Services Form; and
- (c) the Data Protection Provisions.

**"Applicable Laws"** shall mean such applicable laws, rules and regulations as apply to the provision of the Services by TopSource in India.

**"Authorised Users"** shall mean those employees, agents and independent contractors of the Client who are authorised to use the Online Services.

**"Authorised Usage Limit"** shall mean the limit (if applicable) of Authorised Users in the Initial Term or any Renewal Period, as set out in the Order for Services Form.

**"Business Day"** means a day other than a Saturday, Sunday, or public holiday in India, when banks in India are open for business.

**"Client Default"** has the meaning set out in clause 3.1.16

**"Commencement Date"** has the meaning given in clause 3.1.8(b)

**"Conditions"** means these terms and conditions as amended from time to time in accordance with clause 4.13.

**"Confidential Information"**, for the Recipient, shall mean technical, financial and commercial information and data relating to a Disclosing Party's respective businesses, finances, employee information, planning, facilities, products, techniques and processes and shall include, but not limited to, discoveries, ideas, concepts, know-how, techniques, designs, forms, formats, specifications, drawings, blueprints, tracings, diagrams, models, samples, flow charts, data, computer programs, disks, diskettes, tapes, marketing plans, customer names and other technical, financial or commercial information and intellectual properties, any other information including these Conditions, whether in written, oral or other tangible or intangible forms (which is identified as confidential within ten (10) days of its disclosure) or defined by the Disclosing Party as "Confidential" and/or "Proprietary". Confidential Information shall not include information which (i) was known to the party receiving the information (the "Recipient prior to the time of disclosure by the other party (the "Disclosing Party"); (ii) is/was publicly known or part of the public domain or becomes part of the public domain through no breach of these Conditions by the Recipient; or (iii) was lawfully received by the Recipient from a third party without any obligations of confidentiality or breach of these Conditions; or (iv) independently developed by the Recipient without use of Confidential Information; or (v) is required to be disclosed by the Recipient pursuant to any order or requirement from court, administrative or governmental agency, provided that the Recipient shall give the Disclosing Party prompt written notice of such order or requirement and an opportunity to contest or seek an appropriate protective order.

**"Consultant"** means TopSource's employee as selected by the Client to fulfil any Function and who will be engaged solely to provide the Consultant Services for the Client for the Services Period (save as otherwise agreed in writing in accordance with these Conditions).

**"Consultant Fee"** means the salaries for each Consultant plus any contributions and taxes as required in accordance with Applicable Laws.

**"Consultant Services"** means the services to be performed by the relevant Consultant as detailed in the Employment Agreement.

**"Cost to Employment"** means the sum referred to as such detailed in the Order for Services Form or as agreed in writing by the Parties.

**"Data Protection Provisions ("DPP")"** means the data protection provisions which set out the terms on which personal data is processed by TopSource on the Client's behalf under the Agreement.

**"Deliverables"** means deliverables set out in the Order for Services Form, produced by TopSource for the Client.

**"Delivery Partner"** means TopSource's delivery partner (whether partly or wholly owned by TopSource, or acting as its subcontractor) that is located in the Territory and through which TopSource may provide the Services.

**"Deposit"** means the deposit sum (if any) detailed in the Order for Services Form.

**"Employment Agreement"** means contract of employment in the Territory as per Applicable Laws detailing all terms of the relevant Consultant's employment with TopSource, including the Consultant Services, each such Employment Agreement to be for an indefinite period.

**"Employment Service"** means:

- (a) preparation of the Employment Agreement for the relevant Consultant;
- (b) entering into such Employment Agreement with the Consultant; and
- (c) assignment of such Consultant to perform the Consultant Services.

**"Fees"** shall mean the fees for the supply of the Services detailed in the Order for Services Form and payable by the Client in accordance with clause 5 (Fees and payment) and being:

- (a) Setup Fee;
- (b) Services Fee;
- (c) Estimated Consultant Fee;
- (d) any Ad-Hoc Services Fee;
- (e) any Transfer Fee (if applicable).

**"Function(s)"** shall mean the function(s) to be undertaken by the relevant Consultant as detailed in the Specification.

**"Intellectual Property"** shall mean patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, design rights, database rights, business names and domain names, diagrams, specifications, source and object code, materials, data and processes rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.

**"Job Offer"** shall mean means an offer of employment with the Local Entity made to a Consultant where such offer shall be subject to an employment contract substantially similar to the Consultant's Employment Agreement, and on pay and other conditions similar to those applicable to the Consultant in the Consultant's Employment Agreement.

**"Know your Client Survey ("KYC")"** means a form to be completed by the Client prior to the delivery of Services, in accordance with clause 3.1.3

**"Local Entity"** shall mean legal entity partly or wholly owned by the Client and registered and established in the Territory to fulfil a role broadly similar to the performance of the Consultant Services and / or the Services in the Territory.

**"Online Service"** shall mean TopSource's online platform namely "Portico" providing access to human resource data or supplier and customer data through an online portal accessed with User IDs and passwords, including without limitation any updates, upgrades, enhancements and new versions.

**"Order for Services Form (or "Order")"** shall mean the form on which the Client's Order for Services is made and which sets out the key commercial terms for the supply of Services from TopSource to the Client. For the avoidance of doubt, the Order for Services Form forms part of the Agreement.

**"Party"** means a party to the Agreement as set out in the Order for Services Form.

**"Problem"** means a performance concern, disciplinary issue, or other grievance in relation to the performance by a Consultant of the Consultant Services.

**"Relevant Percentage"** means the percentage of the Cost to Employ detailed in the Order for Services Form.

**"Registration Information"** the name and e-mail address of each Authorised User.

**"Services"** means the services, including the Employment of Record and/or HR Services, supplied by TopSource to the Client as set out in the Order for Services Form.

**"Service Fees"** means the charge for the supply of the Services as detailed in the Order for Services Form and being the Relevant Percentage of the Cost to Employ.

**"Services Period"** means the period for which the Services shall be supplied as detailed in the Order for Services Form.

**"Setup Fee"** mean the charge for the onboarding of a Consultant as detailed in the Order for Services Form.

**"Specification"** means the description or specification of the Services detailed in the Order for Service Form.

**"Order for Services Form" or "Order"** means the individual documents in a form similar to the form attached hereto pursuant to the Agreement and signed by TopSource and Client.

**"Taxes"** shall mean all applicable taxes, including without limitation Goods and Services Tax ("GST"), cess, fee, duty, rates, surcharge, imposts and/or levy imposed by any Governmental Authority (whether Central, State, Municipal or otherwise).

**"Territory"** means the Union Republic of India.

**"The Client"** means the client party as set out in the Order for Services Form and/or its affiliated companies, as applicable.

**"TopSource"** means TopSource Support Services Private Limited and/or and/or its Affiliated companies, as indicated in the Order.

**"TopSource Materials"** has the meaning set out in clause 3.1.6

**"TopSource Policies"** means the policies set out at [Portal | Legal & Compliance – TopSource Worldwide](#) as amended or updated from time to time.

**"Transfer Fee"** shall mean the fee per Consultant payable by the Client, for the transfer of a Consultant to the Local Entity, if applicable, as detailed in the Order for Services Form.

## 1.2 Interpretation

1.2.1 Unless expressly provided otherwise in the Agreement, reference to legislation or a legislation provision:

- (a) is a reference to it as amended, extended, or re-enacted from time to time; and
- (b) shall include all subordinate legislation made from time to time under that legislation or legislative provision.

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

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

1.2.4 Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.5 A reference to writing or written includes faxes and emails.

## 2. Services

2.1 Subject to payment by the Client of the Fees and the Client's submission of an appropriately completed KYC, TopSource shall supply the Services to the Client in accordance with the Specifications in all material aspects. Such supply of the Services may be performed by TopSource or via a Delivery Partner facilitated by TopSource (provided always that, in the event that a Delivery Partner performs the Services, TopSource shall not be relieved from primary responsibility for the performance of the Services).

- 2.2 TopSource shall use its reasonable endeavours to meet any performance dates specified in the Order for Services Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 2.3 TopSource reserves the right to amend the Specification 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 Services, and TopSource shall notify the Client in any such event.
- 2.4 TopSource warrants to the Client that the Services will be provided using reasonable care and skill and in accordance with Applicable Laws.
- 2.5 The Client may request that TopSource provides Ad-hoc Services. For the avoidance of doubt, TopSource shall be under no obligation to provide Ad-hoc Services unless and until the parties agree in writing (such agreement not to be unreasonably withheld and delayed):
  - 2.5.1 the scope of such Ad-hoc Services; and
  - 2.5.2 the relevant Ad-hoc Services Charge.

### **Client's Obligations**

#### **3.1 The Client shall:**

- 3.1.1 ensure that the terms of the Order and any information it provides in the Specification (including as to the Functions) are complete and accurate;
- 3.1.2 Provide TopSource with required assistance for and provide Consultants in accordance with the timescale and requirements specified in the Order, provided always that any such information is treated by TopSource as Confidential Information under the Agreement.
- 3.1.3 Prior to receipt of Services, submit a KYC to TopSource which the Client shall ensure:
  - (a) is signed by an officer of the Client; and
  - (b) contains accurate and up-to-date information completed to the satisfaction of TopSource; and the Client shall indemnify TopSource for all costs, losses, expenses, liabilities, and damages TopSource may incur as a result of its reliance on the information provided.
- 3.1.4 Co-operate with each Consultant, TopSource, and Delivery Partner and their respective employees, agents, consultants, sub contractors in all matters relating to the Services and/or the Consultant Services;
- 3.1.5 Provide each Consultant, TopSource, any Delivery Partner and their respective employees, agents, consultants and subcontractors with:
  - (a) access to such facilities as are reasonably required in order to supply the Services and / or the Consultant Services;
  - (b) such information and materials as may be reasonably required in order to supply the Services and / or the Consultant Services, and ensure that:
    - (i) such information is complete and accurate in all material respects; and
    - (ii) any change to such information (including but not limited to payrolls, expense policies or terms and conditions of employment) is promptly notified to each Consultant, TopSource, any Delivery Partner and their respective employees, agents, consultants and subcontractors;
- 3.1.6 Support the activities of TopSource in a reasonable, technical, administrative, and commercial manner and to provide TopSource, inputs, documentation, statements and credentials available with the Client, which shall allow TopSource to perform its duties and responsibilities hereunder.
- 3.1.7 Grant to TopSource and or the Consultants access to such facilities at the premises occupied by Client, if such Services are provided through the official location site of the Client, as set out in the Order as TopSource or the Consultants may reasonably require from time to time in order to discharge their respective obligations under the Agreement;
- 3.1.8 keep all materials, equipment, documents and other property of TopSource (TopSource Materials) at the Client's premises in safe custody at the Client's own risk, maintain the TopSource Materials in good condition until returned to TopSource, and not dispose of or use TopSource Materials other than in accordance with TopSource's written instructions or authorisation;
- 3.1.9 treat the Consultants in a suitably professional manner in any dealings with them and in accordance with good business practice.
- 3.1.10 manage and direct the day-to-day workload of the Consultants within the parameters of the Function and under no circumstances:

- a) instruct, request, entice or otherwise endeavour to persuade a Consultant to take any action which could reasonably be considered to be to the detriment of TopSource or TopSource's business; or
  - b) (during the period from the Commencement Date and expiring 6 months after the expiry or termination of the Agreement) solicit or entice away from TopSource or employ or attempt to employ any person who is, or has been, engaged as an employee (excluding any Consultants), consultant or subcontractor of TopSource in the provision of the Services;
- 3.1.11 comply with the TopSource Policies
- 3.1.12 Provide information and documents reasonably requested by TopSource in a timely basis as per the Order to be agreed, provided always that any such information is treated by TopSource as Confidential Information under the Agreement.
- 3.1.13 Comply with all the local laws, trade practices and licensing requirements and ensure that all licenses, registrations and any statutory or trade body obligations are complete and up to date as applicable to Territory, for the Client to pursue its business activities for TopSource.
- 3.1.14 Provide sufficient working conditions for the Consultants who are performing Services on the premises of the Client. Client agrees that TopSource will not be held vicariously liable for any injury or accident (including death) suffered by the Consultants while working at the premises of the Client. The Client agrees to indemnify and hold TopSource harmless against any claims whatsoever on account of breach or violation of this obligation under clause 3.1.12 of the Agreement.
- 3.1.15 To provide necessary infrastructure, hardware, software as mutually agreed between parties, for performance of Services.
- 3.1.16 In case the Client permits TopSource to use any Client equipment, tools or facilities during the term of the Agreement, the Client represents that Client have valid authority to allow TopSource to use such Client equipment, tools, or facilities and Client shall be responsible for any injury to any person or damage to property arising out of use of such equipment, tools or facilities if such usage is in accordance with the terms and conditions provided by the Client.

### **3.2 Online Services:**

- 3.2.1 The Online Service, the Client will:
- (i) ensure that the Client's network and systems comply with the relevant specifications provided by TopSource from time to time, including the provision of reliable internet access and adequate bandwidth for use of the Online Service;
  - (ii) be solely responsible for procuring and maintaining its network connections and telecommunications links for the Client's systems to the access the Online Service, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet;
  - (iii) not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Online Service that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive or causes damage or injury to any person or property and TopSource reserves the right, without liability to the Client, to disable the Client's access to any material that breaches the provisions of this Clause.
- 3.2.2 Client will not, except as may be allowed by any applicable law which is incapable of exclusion by Conditions between the Parties:
- (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Online Service in any form or media or by any means; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of Online Service;
  - (iii) access all or any part of the Online Service in order to build a product or service which competes with the Online Service;
  - (iv) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Online Service available to any third party except the Authorised Users;
  - (v) attempt to obtain, or assist third parties in obtaining, access to the Online Service, other than as provided herein.

- 3.2.3 Further, the Client agrees that:
- (i) use all reasonable endeavours to prevent any unauthorised access to, or use of, the Online Service and, in the event of any such unauthorised access or use, promptly notify TopSource; and
  - (ii) the Online Service is provided to the Client only and shall not be considered provided to any subsidiary or holding company of the Client, unless stated otherwise in the Order.
- 3.2.4 In relation to Authorised Users, the Client shall provide TopSource with the Registration Information (and the Client warrants that prior to providing such Registration Information to TopSource, the Client has obtained such consents from the relevant Authorised Users as are necessary to ensure compliance with applicable Data Protection Legislation), such Registration Information to be correct at all times during the Term.
- 3.2.5 Client acknowledges and agrees that:
- a) access to the Online Service shall be granted to individual Authorised Users only and shall be limited by reference to the Authorised Usage Limit; such access and relevant passwords may only be used by the individual Authorised User to whom they were assigned and shall not be transferred, assigned or otherwise loaned (whether for temporary use or otherwise) in any manner whatsoever;
  - b) when an Authorised User's employment with the Client ceases or is re-assigned (or is otherwise no longer to be granted access to the Online Service), the Client shall notify TopSource immediately in writing in order that the corresponding access and password can be disabled;
  - c) it will ensure that the Authorised Users use the Online Service in accordance with the terms and conditions of these Conditions and shall be responsible for any Authorised User's breach of these Conditions;
  - d) it will maintain a written list of current Authorised Users and shall provide such list to TopSource as may be reasonably requested by TopSource from time to time; and
  - e) acknowledge and agrees that TopSource may audit compliance with this clause 3.1.15 on reasonable prior notice, in such a manner as not to substantially interfere with the Client's normal conduct of business.
- 3.2.6 Client shall not have any authority or power to make any changes in such licensed software and shall use it only for the purpose for which the license has been provided. It is confirmed and clarified that Client shall ensure that any of the software is not mis-used or abused in any manner whatsoever and shall indemnify and hold TopSource harmless against any claims for damages, compensation, costs and or any other liability whatsoever and howsoever arising, whether civil or criminal. It shall be the responsibility of the Client to make its employees and/or Authorised Users aware about the usage restrictions herein indicated.
- 3.3 If TopSource's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("Client Default"):
- a) without limiting or affecting any other right or remedy available to it, TopSource shall have the right to suspend performance of the Services until the Client remedy the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays TopSource's performance of any of its obligations;
  - b) TopSource shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from TopSource's failure or delay to perform any of its obligations as set out in this clause 3.
- 3.4 The Client shall reimburse TopSource on written demand for any costs or losses sustained or incurred by TopSource arising directly or indirectly from the Client Default.

### **3. Consultants**

- 4.1 Each Employment Agreement shall be subject to the Client's prior approval (such approval not to be unreasonably withheld or delayed).
- 4.2 The parties acknowledge and agree that the provision by TopSource of the Employment Service shall include the taking of such steps (in accordance with the relevant Employment Agreement) as the Client shall reasonably require in relation to the performance by any Consultant of the Consultant Services.



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- 4.3 In the event that the Client becomes aware of a Problem, the Client shall promptly notify TopSource of the same (including sufficient detail for TopSource to be able to investigate the Problem) and shall instruct TopSource to either:
- a) work with the Consultant in conjunction with the Client's nominated representative to seek to resolve the Problem, TopSource shall advise the Client when a performance improvement plan is requested to solve the Problem, (provided always that, if the Problem is not resolved to the Client's reasonable satisfaction within the timelines established by the Applicable Laws of the Territory, the provisions of clause 4.3.b shall apply); or
  - b) (subject always to the Applicable Laws of the Territory, including as to showing due cause for the same) terminate the relevant Employment Agreement providing the Consultant the statutory notice period according to the Applicable Laws.
- 4.4 In the event that the Client instructs TopSource pursuant to clause 4.3.b, TopSource shall take such steps as are required to verify whether such termination is permitted under the Applicable Laws of the Territory and where such termination:
- 4.4.1 is so permitted, TopSource shall conduct such termination provided always that the Client shall first pay to TopSource:
- a) the Services Charge applicable to the notice period referred to; and
  - b) any statutory payments due to the Consultant as defined by the employment laws of the Territory;
- 4.4.2 is not so permitted, TopSource shall (after first confirming the same to the Client) carry out such termination and the Client shall indemnify TopSource for all costs, losses, expenses, liabilities, and damages TopSource may incur as a result of that Employment Agreement being terminated (including but not limited to all reasonable legal fees) in addition to any statutory payments due to the Consultant as defined by the employment laws of the Territory.
- 4.5 In the event that there is no Problem, but the Client no longer requires the Consultant to perform the Consultant Services, the Client may (subject always to the Applicable Laws of the Territory) instruct TopSource to terminate the relevant Employment Agreement providing the statutory written notice to the Consultant subject always to the Client:
- 4.5.1 indemnifying TopSource:
- a) as detailed in clause 4.6 (including but not limited to redundancy and severance pay, pay in lieu of notice and payment in lieu of accumulated holiday provisions); and
  - b) (in the event that the termination is not permitted under the Applicable Laws of the Territory) in respect of the Consultant's wages for the balance of the Employment Agreement together with all other costs, losses, expenses, liabilities and damages TopSource may incur as a result of the Employment Agreement being terminated (including but not limited to all reasonable legal fees); and
  - c) in respect of all other costs, losses, expenses, liabilities and damages TopSource incurs as a result of that Consultant no longer being required to perform the Consultant Services (including but not limited to all reasonable legal fees);
- 4.5.2 first paying to TopSource the Services Charge applicable to the notice period referred to.
- 4.6 The parties acknowledge and agree that:
- a) the Consultants are employees of TopSource and TopSource shall remain solely responsible for the administration of all salary, tax, as per Applicable Laws, and other employment related financial matters arising in relation to the Consultants whilst they are employed by TopSource, (and shall indemnify the Client in respect of any demands relating to the same as a result of the engagement of Consultants under the Agreement);
  - b) The Client remains solely and fully liable for any action taken by the Consultant under its instruction or direction during the course of them performing the Consultant Services and shall indemnify, defend and hold TopSource harmless from and against any and all third party claims, damages, losses, liability, causes of action, judgment, costs or expenses (including reasonable attorney's fees) asserted against or suffered by TopSource arising out of or related to any such action taken by a Consultant under the Client's instruction or direction.
- 4.7 The Client shall not take any action or instruct, persuade, entice, or otherwise influence the Consultant to take any action which:
- a) would be illegal under Indian laws; or
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- b) is illegal under the local laws of the Territory; or
  - c) is in breach of the terms of the Agreement or of any third party's intellectual property rights; or
  - d) would cause any Consultant to be in breach of the terms of its Employment Agreement; and
  - e) the Client (Indemnifying Party) shall indemnify, defend, and hold harmless TopSource (Indemnified Party) from and against any and all third party claims, damages, losses, liability, causes of action, judgment, costs or expenses (including reasonable attorney's fees) asserted against or suffered by the Indemnified Party arising out of or related to a breach of the Indemnifying Party's obligations set forth in this clause 4.11 (to the extent not caused or contributed to by an unlawful, negligent or willful act or omission of the Indemnified Party).
- 4.8 TopSource confirms that it has in place satisfactory levels of insurance coverage and policies in effect during the duration of the Agreement with reputable insurance companies. the Client shall have access to TopSource insurance details, in effect from time to time, by using the following link [Portal | Legal & Compliance – TopSource Worldwide](#).
- 4.9 In the event that any legal determination regarding a Consultant under the Agreement is required, TopSource will engage the services of suitably qualified independent legal professionals in the Territory to provide written legal advice of such determination, provided always that such determination shall not reduce or mitigate the Client's obligations in relation to the termination of the employment of any Consultant under this clause 4 or as detailed elsewhere in these Conditions.
- 4.10 The Client acknowledges and accept that any termination of the employment shall be started by TopSource as employer of the Consultant, and the Client shall refrain to communicate any termination intention, or disciplinary action to the Consultant without the involvement of TopSource.

#### **4. Fees and Payment**

- 5.1 The Fees shall be subject to increase as detailed in the Order for Services Form.
- 5.2 The Client acknowledges and agrees that all Fees are subject to amendment if there are changes:
- a) to the Client's requirements for the Services (such changes to requirements and the amended Fees to be subject to prior written agreement, such agreement not to be unreasonably withheld or delayed); and / or
  - b) in market conditions in the Territory.
- 5.3 All fees shall be invoiced in Indian Rupees in the Territory unless otherwise agreed by the parties in writing.
- 5.4 TopSource shall invoice the Client, and the Client shall pay each invoice submitted by TopSource, as detailed in the Order for Services Form. Thereafter, TopSource will be entitled to renegotiate the pricing and mutually agree with the Client for the revision of the Service Fees.
- 5.5 TopSource shall submit digitally signed invoices to Client based on the terms set out in Schedule B of Order for Services Form:
- a) Invoices will be submitted electronically.
  - b) All billing will be done on the last day of month for the Service provided in the previous month, unless otherwise quoted.
  - c) Invoices are due within 30 days from the date of invoice.
- 5.6 Time for payment shall be of the essence of the Agreement. Any issues with respect to the invoices submitted by TopSource will be raised by the Client within five (5) days of receipt of invoice, failing which the invoices are deemed to be accepted by the Client. The Client acknowledges and agrees that any failure to make payment and / or any late payment of any fees may cause significant financial hardship to TopSource which may result in TopSource being unable to meet the Consultant Fee and accordingly the Client shall indemnify TopSource against all loss or damage that results from any such failure and / or late payment of any invoice under the Agreement.
- 5.7 All amounts due under the 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).
- 5.8 **Taxes:** All Fees payable by the Client under the Agreement are exclusive of all applicable Taxes as required by law, which shall additionally be paid by Client, where relevant, at the rate and from time to time in the manner prescribed by law. Any statutory variation in GST if applicable and specified in the Agreement, or the introduction of new duties, levies or taxes from the date of execution of the Agreement, till the scheduled date for completion of Services if any and limited to direct invoices of TopSource shall be to the account of the Client, provided that TopSource provides the necessary documentary evidence / supporting



by way of gazetted notifications etc. to prove the change in such levies or taxes during the date of execution of the Agreement and TopSource ensures that it is fully complied to enable Client to avail entire input tax credit. TopSource shall not be liable for any claims or losses incurred by the Client due to any non-compliance(s) by Client of the applicable law and the same shall be recoverable from Client by TopSource.

- 5.9 In addition to and not in lieu of TopSource's rights under Section 13.2, in the event of any invoices more than thirty (30) days past due, TopSource, in its sole discretion may
- (i) charge a late payment charge equal to the lower of 1.5% per month or the highest rate permitted by law until such time as all outstanding invoices have been paid; and/or
  - (ii) stop providing Services with or without notice to the Client pursuant to the Agreement and any/all Order for Services Form until such time as the past invoices have been paid.
- 5.10 In the event that TopSource stops providing Services pursuant to this provision, in no event will TopSource be penalised or held liable for delays caused by such cessation of Services and all schedules for completion of projects pursuant to Statement of Work will be automatically adjusted to extend any deadlines by the number of days in which TopSource stopped providing services because of Client's failure to pay past due invoices.
- 5.11 Unless otherwise agreed in the Order for Services Form, if TopSource is required to travel outside the limits of Pune/ Mumbai or any place that forms to be the part of Client's location of work, in order to carry out the duties as mentioned in the Order for Services Form, the relative expenses, including but not limited to accommodation, food and travel, will be borne by Client; provided that, any such expenses may be approved in writing in advance by Client (which writing may be in the form of email confirmation from an authorized representative of Client). Such reimbursement will be paid by the Client on "**Immediate basis**".
- 5.12 **Additional services or efforts:** TopSource reserves the right, by giving written notice to Client at any time before performance of the relevant Services; to increase the price of such Services to reflect any increase in the cost to TopSource which is due to any act or omission of Client, including but not limited to, any change in the date for the performance of Services or any delay caused by any instructions of Client or failure by Client to give TopSource adequate and/or accurate information or instructions.

## **6. Intellectual Property Rights**

- 6.1 All Intellectual Property belonging to a Party prior to the execution of the Agreement shall remain vested in that Party.
- 6.2 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by TopSource. For the avoidance of doubt, the Online Services shall form part of Intellectual Property Rights exclusively owned by TopSource.
- 6.3 All Intellectual Property Rights created by the Consultants in performing the Consultant Services under the Agreement shall remain and vest in the Client and TopSource hereby assigns such rights to the Client without any additional service fee charge. The Client shall approve and cover any cost related to the transfer of any Intellectual Property Rights where any deeds, administrative or judicial procedure are requested according to the applicable law, Topsource shall not take any action without the Client approval of these potential costs.
- 6.4 Client acknowledges and agrees that TopSource owns intellectual property in the Online Services. TopSource agrees to provide license as per terms of Order for Services Form to the extent it is required as per the terms of the Agreement. It is agreed that TopSource shall retain right, title and interest to Portico and nothing in the Agreement shall be deemed to transfer any rights, licenses, interest, and title in Portico, except as otherwise granted by TopSource.
- 6.5 TopSource grants to the Client or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free license during the term of the Agreement to copy the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business.
- 6.6 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 6.5.
- 6.7 The Client grants TopSource a fully paid-up, non-exclusive, royalty-free, non-transferable license to copy and modify any materials provided by the Client to TopSource for the term of the Agreement for the purpose of providing the Services to the Client.

6.8 The Client shall defend at the Client's own expense (and shall indemnify TopSource in respect of all losses, costs and damages resulting from or in connection with) any claim brought against TopSource alleging that any aspect of the Services infringes a third-party patent, copyright, or similar right.

## **7. Confidentiality**

7.1 Both parties undertake 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 7.2 .

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

- a) to its employees, officers, representatives, contractors, subcontractors, or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors, or advisers to whom it discloses the other party's confidential information comply with this clause 7;
- b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

7.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.

7.4 Each Party to the Agreement shall promptly notify the other Party if it becomes aware of any breach of confidentiality by any person, including employees, to whom it has divulged all or any part of the Confidential Information and shall give the other Party all reasonable assistance in connection with any proceedings which the other Party may institute against such person for breach of confidence.

## **7.5 Use of the Confidential Information**

7.5.1 Recipient shall only release Confidential Information to its employees, advisors, consultants and contractors on "need to know" basis, provided that such employees, advisors, consultants and contractors are sufficiently bound by confidentiality agreements. Recipient shall treat Confidential Information with the same degree of care and apply no lesser security measures than it affords to its own Confidential Information, which the Recipient warrants as providing adequate protection against unauthorised disclosure, copying or use.

7.5.2 The Recipient shall make no commercial use of the Disclosing Party's Confidential Information.

7.5.3 The Recipient shall keep separate all documents and other records of the Recipient from all Confidential Information received and/or all Confidential Information generated by the Recipient based on it.

7.5.4 The Recipient shall wherever reasonably practicable obtain a written statement from each of its employees having access to the Confidential Information which shall, inter-alia, include undertaking to keep the same confidential, and shall take such steps as may be reasonably desirable to enforce such obligations.

7.5.5 The Recipient shall at the request of the Disclosing Party: -

- (i) Return to the Disclosing Party all the Confidential Information in the possession or under control of the Recipient, and all documents and other material (including all electronically generated or stored data) containing or embodying the Confidential Information (or any part of it) together with all copies, analyses, memoranda or other notes made by the Recipient and which are in its possession custody or control that bear or incorporate any part of the Confidential Information; and/or;
- (ii) Destroy or completely remove all the Confidential Information in the possession or under control of the Recipient, and all documents and other material (including all electronically generated or stored data) containing or embodying the Confidential Information (or any part of it) together with all copies, analyses, memoranda or other notes made by the Recipient and which are in its possession, custody or control that bear or incorporate any part of the Confidential Information.

7.6 The confidentiality obligations of the Parties under this shall survive for period of two (2) years post termination or expiration of the Agreement.

## **8. Warranties**

- 8.1 Order for Services Form In addition to other representations and warranties set forth in the Agreement, Parties represents and warrants that:
- 8.1.1 it is an existing company under the companies act 1956/2013 and any subsequent amendments;
  - 8.1.2 that the performance of the Agreement do not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party,
  - 8.1.3 that it will not use in the performance of its responsibilities under the Agreement any Confidential Information or trade secrets of any other person or entity,
  - 8.1.4 that it has the right to enter into the Agreement and that same is a valid and binding obligation of TopSource.

## **9. Disclaimer of Warranties**

- 9.1 Each party acknowledges that in entering into the 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 the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement. Nothing in this clause shall limit or exclude any liability for fraud.
- 9.2 EXCEPT AS OTHERWISE STATED IN THE AGREEMENT, TOPSOURCE MAKES NO WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR WARRANTIES OF ANY DELIVERABLES OR SERVICES, OR THE APPROPRIATENESS OF THE CLIENT'S OR ANY THIRD-PARTY SPECIFICATIONS. IN ADDITION, TOPSOURCE EXPRESSLY DISCLAIMS ANY WARRANTY OR LIABILITY WITH RESPECT TO SECURITY OF DATA, OR COMPLIANCE WITH LAWS, REGULATIONS, OR OTHER OFFICIAL GOVERNMENT RELEASES APPLICABLE TO THE CLIENT, WHICH SHALL BE THE SOLE RESPONSIBILITY OF THE CLIENT.

## **10. Client Warranty and Indemnification**

- 10.1 Client warrants and represents to TopSource that the entering into the Agreement and the performance by TopSource and the Consultants of all Services requested by Client with respect to the Job Description(s) provided in the Order for Services Form will not result in, or constitute, any of the following:
- (i) a default or an event that, with notice or lapse of time, or both, would be a default, breach, or violation of the articles of incorporation or bylaws of each of the Parties;
  - (ii) an event or condition that would permit any person to terminate any contract, agreement, instrument or other obligation to which each of the Parties is a party, or
  - (iii) a violation of any law, rule, regulation, writ, judgment, injunction, decree, determination, award or other order of any court, government, or governmental agency or instrumentality.
- 10.2 Client agrees to defend, hold harmless and indemnify TopSource from and against any and all costs, losses, damages, claims or liabilities of any nature, (including but not limited to reasonable legal representative fees) arising out of or related to:
- (i) acts, omissions, errors or breaches by Client relating to the provision of these services (including but not limited to any Client employee actions relating to the management and care of Consultants)
  - (ii) any third-party action (legal or otherwise) relating to the acts, omission, errors or breaches by Consultants under the direction of Client; or
  - (iii) any third-party action (legal or otherwise) relating to the products or services provided or contracted by Client to any third party at any time. TopSource must promptly notify Client of all claims pursuant to this Section and Client shall have the sole right to control the defence or settlement of any such claim.

## **11. Data Protection**

- 11.1 The parties agree to comply with the provisions in the **Data Protection Provisions** (the 'DPP').

## **12. Limitation of Liability**

- 12.1 Nothing in this Clause 12 shall limit :
- 12.1.1 The Client's payment obligations under the Agreement;

- 12.1.2 The Client's liability pursuant to the indemnities relating to: the submission of KYC; termination not permitted under laws of lands; indemnity for Employment Agreements; responsibility of client for any action taken by Consultant; payment of invoice; indemnity for infringement of third-party intellectual property rights; and no remedy for material breach;
- 12.1.3 TopSource's liability pursuant to the indemnity in clause 4.6.a;
- 12.2 Nothing in the Agreement limits either party's liability:
  - 12.2.1 pursuant to the indemnity of the DPP;
  - 12.2.2 for death or personal injury caused by negligence;
  - 12.2.3 for fraud or fraudulent misrepresentation; or
  - 12.2.4 for breach of the terms of the Applicable Laws; or
  - 12.2.5 for any other liability that cannot be limited at law.
- 12.3 Subject to clause 12.1 and clause 12.2, this clause 12.3 sets out the types of loss that are wholly excluded:
  - 12.3.1 loss of profits
  - 12.3.2 loss of sales or business.
  - 12.3.3 loss of agreements or contracts.
  - 12.3.4 loss of anticipated savings.
  - 12.3.5 loss of use or corruption of software, data, or information.
  - 12.3.6 loss of or damage to goodwill; and
  - 12.3.7 indirect or consequential loss.
- 12.4 THE CLIENT AGREES THAT TOPSOURCE' MAXIMUM AGGREGATE LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE)) HEREUNDER FOR ALL DAMAGES, UNDER OR IN CONNECTION WITH THE AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE TOTAL AMOUNT PAID FOR SERVICES UNDER THE APPLICABLE ORDER FOR SERVICES FORM FOR PRECEDING SIX (6) MONTHS UNDER WHICH THE CLAIM AROSE. NOTWITHSTANDING THE FOREGOING, NO CLAIM AGAINST TOPSOURCE MAY BE BROUGHT MORE THAN ONE (1) YEAR AFTER THE FACTS GIVING RISE TO SUCH CLAIM HAVE ARISEN. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSIONS OF DAMAGES IN THIS CLAUSE 12 FORM AN ESSENTIAL BASIS OF THE AGREEMENT BETWEEN THE PARTIES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.
- 12.5 This clause 12 shall survive termination of the Agreement.

### **13. Term and Termination**

- 13.1 The Agreement shall remain in effect for an initial period of 3 (three) years from Effective Date ("**Initial term**") and thereafter on completion of the Initial Term, the Agreement will automatically continue in effect for further period of one (1) year each from the date of completion of Initial Term ("**Renewal Term**") unless terminated as per the terms of these Conditions. The Initial Term and any Renewal Terms are collectively referred to as "**Term**". Unless otherwise agreed, any termination of these Conditions, other than pursuant to Clause 13.2, shall not terminate any Order for Service Form in progress and the provisions of these Conditions will continue to apply to such Order for Service Form.
- 13.2 After the Initial Term is completed and without affecting any other right or remedy available to either Party, such Party will be entitled to terminate these Conditions and/ or Order for Service Form, in whole or in part by giving the other Party three (3) months prior written notice.
- 13.3 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
  - 13.3.1 the other party commits a material breach of any term of the Agreement (and if such breach is remedial) fails to remedy that breach within thirty (30) days of that party being notified in writing to do so;
  - 13.3.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors or is declared insolvent or is being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- 13.3.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 13.3.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 13.4 Without affecting any other right or remedy available to either party:
  - 13.4.1 either party may terminate the Agreement by giving the other party three months' written notice, or the notice period established in the Order for Services Form for a specific service. The Parties agree that the present Agreement shall not create any financial obligation from the Client toward TopSource without the relevant Order for Services Form for each specific services in place;
  - 13.4.2 The Client may terminate the Agreement by giving TopSource ninety days' written notice in the event that the Client elects to transfer the Client's business in the Territory to a Local Entity.
- 13.5 Without affecting any other right or remedy available to it, TopSource may:
  - 13.5.1 terminate the Agreement with immediate effect:
    - a) by giving 14 (fourteen) days written notice to the Client if the Client fails to pay any amount due under the Agreement on the due date for payment; or
    - b) by giving written notice to the Client if there is a change of Control of the Client; or
    - c) by giving written notice to the Client if the Client has failed to submit an appropriately completed KYC in accordance with clause 3.1.3.
  - 13.5.2 suspend the supply of Services under the Agreement or any other contract between the Client and TopSource if:
    - a) The Client fails to pay any amount due under the Agreement on the due date for payment; or
    - b) The Client becomes subject to any of the events listed in clause 12, or TopSource reasonably believes that the Client is about to become subject to any of them; or
    - c) TopSource reasonably believes that the Client is about to become subject to any of the events listed in clause 12.2 and 12.3.
- 13.6 Consequences of Termination**
  - Upon termination of the Agreement:
    - 13.6.1 The Client shall immediately pay to TopSource all of TopSource's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, TopSource shall submit an invoice, which shall be payable by the Client immediately on receipt;
    - 13.6.2 indemnify TopSource for all costs, losses, expenses, liabilities, and damages TopSource incurs as a result of:
      - a) Consultants no longer being required to perform the Consultant Services (including but not limited to all reasonable legal fees); and / or
      - b) TopSource having to terminate such Consultants' Employment Agreements and/or having to make such Consultants redundant.
    - 13.6.3 The Client shall return all TopSource Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then TopSource may seek any legal remedy including any court injunction in order to regain possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.
- 13.7 Where termination is pursuant to clause 13.3, the Client shall be entitled to request that the employment of any Consultants is transferred to the Local Entity (provided always that the Client shall notify TopSource of such request simultaneously with giving notice of termination pursuant to clause 13). Within thirty (30) days of receipt of such notice, TopSource shall produce Job Offers for all such Consultants in respect of new jobs with the Local Entity, provided always that the Client:
  - 13.7.1 shall provide TopSource with all necessary information required to produce such Job Offers.
  - 13.7.2 warrants that it is authorised and empowered to make such request; and shall procure that the Local Entity shall honour the terms of such Job Offers, and the Client shall indemnify TopSource against any and all loss or damage TopSource may suffer arising from any act omission or default of the Client in relation to this clause. 13.6.3.

- 13.7.3 When and if applicable, TopSource reserves the right to invoice for the Transfer Fee arising in relation to this clause 13.6 shall be calculated based on the transfer to the Client's Local Entity of all the Consultants referred to in such notice.
- 13.8 Upon acceptance of the Job Offer, each Consultant shall resign from TopSource's employment, and the Client shall provide them with employment contracts which the Client (or the Local Entity as applicable) shall execute directly with each of them. TopSource shall provide such reasonable assistance and cooperation to the Client as the Client may reasonably require in order to effect an orderly transfer of the Consultants to the Client (or the Local Entity as applicable).
- 13.9 Termination of the Agreement shall not affect any rights or 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 which existed at or before the date of termination or expiry.
- 13.10 Upon termination, TopSource agrees to provide all reasonable assistance to the Client from time to time reasonably requested, including the transfer/assignment of any contracts of employment to either the Client or a third party (from time to time nominated by the Client). In the event of termination of the Agreement pursuant to this Section, Client shall pay to TopSource those fees for Deliverables that have been completed by TopSource in addition to whatever other rights or remedies TopSource may have at law or in equity.
- 13.11 Any provision of the Agreement Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

## **14. General**

### **14.1 Force Majeure**

Neither Party shall be in breach of the Agreement nor liable for delay in performing or failure to perform any of its obligations hereunder under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. If a party is prevented from performing its obligations under the Agreement for a period of thirty (30) days, then either due to causes beyond its reasonable control, then the other party may terminate the Agreement by giving fourteen (14) days' written notice to the affected party.

### **14.2 Assignment and other dealings**

- 14.2.1 TopSource may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement.
- 14.2.2 The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of the Client's rights and obligations under the Agreement without the prior written consent of TopSource.

### **14.3 Change Order for Services Form**

At any time during the Agreement Parties reserve the right for introducing changes to the Services, Deliverables and time schedule at any time during the term of Order for Services Form, provided pursuant to the Agreement using the following procedures:

- 14.3.1 Either Party may propose change request to any aspect of a Order for Services Form by issuing written request to the other Party describing the proposed change in enough detail to enable initial consideration of the proposed change ("**Change Request**"). Upon the Change Request being issued, TopSource will prepare and submit to the Client, a proposal ("**Change Request Proposal**"), setting out full details of the change, including any changes to the Services, Deliverables, Fees, specifications, milestones, project plan, due dates and any other areas as deemed fit by TopSource and arising as a result of the change.
- 14.3.2 The Client will consider the Change Request Proposal and within a period of seven (7) working days, will notify TopSource that it:
- (i) accepts the Change Request Proposal, in which case the Client will sign the Change Request Proposal, or
  - (ii) requests further information or changes to the Change Request Proposal, in which case the Parties will discuss the required information and changes and if agreed, TopSource will then re-submit a revised Change Request Proposal to the Client; or



- (iii) rejects the Change Request Proposal, in which case the Parties will have no further obligations in relation to that change and the Parties' obligations under the Agreement and the relevant Order for Services Form will continue in force unchanged.
  - 14.3.3 Any additional feature requirement that is not covered in the current Order for Services Form will be treated as Change Request and will be agreed upon in writing by the Parties in the manner set out hereinabove. No changes or additions in the Services may be implemented or acted upon by TopSource unless the Change Request Proposal is signed, as provided hereinbefore.
  - 14.3.4 Notwithstanding the foregoing, if TopSource performs any services envisaged under the Change Request and a Change Request Proposal has not been executed between the Parties for the same, the Client will be liable to pay the amount for all such services, including any service fees, expenses and costs to TopSource.
- A person who is not a party to the Agreement has no rights to enforce any term of the Agreement.
- 14.4 The Agreement shall be binding upon and inure to the benefit of each of the parties and each of its respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, either party may assign the Agreement without the consent of the other party in connection with the sale of all or substantially all of the assets of such party in a merger or other similar transaction.
- 14.5 The Agreement shall be governed by and construed in accordance with the laws of India without regard to its conflicts of laws provisions, and both parties submit to the exclusive jurisdiction of the courts of Pune, India. The authorized representative, i.e. signatories to the Agreement or their legal successors, shall first attempt to arrive at an amicable settlement within a period of thirty (30) days from the date when notice in writing is received from the aggrieved party that dispute/s have arisen with a request for resolution by amicable settlement. If such negotiation process fails, then all disputes arising from or related to the Agreement shall be resolved by arbitration. The arbitration shall be conducted in the accordance with the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time. Arbitration shall be held at Pune and the language will be English. The courts at Pune, India, shall have exclusive jurisdiction in respect of any dispute/s relating to the Agreement as herein provided. The fee charged by the arbitrators shall equally be borne by both the parties.
- 14.6 The Agreement is drafted in the English language. If the Agreement is translated into any other language, the English language version shall prevail.
- 14.7 Any notice or other communication given to a party under or in connection with the Agreement, shall be in writing and shall be delivered by hand or pre-paid by pre-paid first-class post or other next working day delivery service or sent by e-mail, (in each case to the address detailed in the Order) or sent by fax to the fax number detailed in the Order.
- 14.7.1 Any notice or other communication shall be deemed to have been received:
    - a) if delivered by hand, at the time the notice is left at the proper address;
    - b) 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; or
    - c) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause business hours means 9.300m to 6:30 pm Monday to Friday on a day that is not a public holiday in the place of receipt.
  - 14.7.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 14.8 Nothing in the Agreement shall create any association, partnership, or joint venture between the Parties hereto, it being understood and agreed that the Parties are independent contractors and neither Party shall have the power or authority to obligate the other in any way. Neither TopSource, nor its employees, consultants or agents shall be deemed employees or agents of Client. TopSource and its Consultants are not engaged as agents, distributors, resellers or joint venture partners with Client and that TopSource and its Consultants hold no rights to or in any Client product or service; and

that TopSource and its Consultants may not at any time act as a legal representative for or on behalf of the Client.

- 14.9 **Waiver.** waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or default. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.10 **Variation:** Except as set out in these Conditions, no variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 14.11 **Severance:** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement. If any provision or part-provision of the Agreement deleted under this clause 14.12 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.12 **Entire Agreement:** The Agreement constitutes the entire agreement between the parties and supersedes and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter. For the avoidance of doubt in the event of any contradiction or inconsistency between these Conditions and the terms included in the Order for Services Form, the terms in the Order for Services Form shall prevail.
- 14.13 **Governing law and jurisdiction.** The Agreement shall be governed by, and construed in accordance with, the laws of India.