

UK EOR SERVICES TERMS AND CONDITIONS

The TopSource EoR Terms and Conditions are incorporated into and subject to the Agreement between TopSource Worldwide (Group) Limited (“TopSource”) 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:

Affiliate: Any subsidiary or parent company of TopSource, including but not limited to the following, and their respective subsidiaries from time to time: TopSource Worldwide Group Limited; TopSource Worldwide (PEO) Limited; Topsource Worldwide (UK) Limited;; Compandben SA; Compandben International Limited; Compandben Sweden AB; Compandben Iceland EHF; Compandben International SLU; Topsource Worldwide (US) LLC; Blueback Global Services (UK) Limited; Blueback Global (UK) Limited; Blueback Global Inc.; Blueback Global- Services Inc (US); and Blueback Global Services (SG) Pte Ltd.

Agreement: 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: such laws, statutes and regulations from time to time in force, including but not limited to the governing law of this Agreement, and the applicable laws governing the employment relationship with the Consultant in the Territory and / or as apply to the provision of the Services by TopSource.

Business Day: a day, other than a Saturday, Sunday, or public holiday in England, when banks in London are open for business.

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

Client Default: has the meaning set out in clause 4.2.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.5.4.

Consultant: 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 Services: the services to be performed by the relevant Consultant as detailed in the Employment Agreement.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression “change of control” shall be construed accordingly.

Cost to Employment: 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”): the data protection provisions which set out the terms on which personal data is shared between TopSource and the Client under the Agreement.

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

Delivery Partner: 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.

Employment Agreement: a local contract of employment in the Territory 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 and subject to any labour laws and requirements of the Territory.

Employment Service: means:

- (a) preparation of the Employment Agreement for the relevant Consultant;
- (b) entering into such Employment Agreement with the Consultant;
- (c) assignment of such Consultant to perform the Consultant Services; and
- (d) the provision of, and agreement with the relevant Consultant of, any applicable performance improvement plans, disciplinary actions, terminations and salary together with any other services as the Client shall reasonably require in relation to the measurement of the performance by any Consultant of the Consultant Services.

Fees: the fees for the supply of the Services detailed in the Order for Services Form and payable by the Client in accordance with clause 6 (Fees and payment) which will include the following categories:

- (a) **Ad-Hoc Services Fee:** such sum as reflects any out of scope Service required in writing by the Client including but not limited to any administration costs (including but not limited to sourcing and management of any specific benefits and/or insurance that the Client requires to be included as part of the Services) and travel/work permit associated fees, management of visa applications for the Client's Consultants as required and, where applicable, work permit applications.
- (b) **Administration Fee:** such sum as is detailed in the Order Form, being the fee chargeable by TopSource and payable by the Client in respect of any and all late payments by the Client of any sums due under this Agreement.
- (c) **Annual Fee:** such fee as includes but is not limited to, as applicable, the preparation and filing of annual payroll tax returns; preparation and distribution of annual payroll records to and for each Consultant; management of annual bonuses, management of benefits, and equivalent completion work.
- (d) **Consultant Fee:** the estimated total cost of employment of the applicable Consultant provided by TopSource from time to time, including but not limited to the applicable gross salary, applicable holiday allowance, accruals of statutory benefits and severance payments together with any non-statutory benefits and/or allowance requested and approved by the Client.
- (e) **Deposit:** the amount required from time to time to cover payroll, termination notice period and severance pay liabilities for the Consultants, being the greater of one (1) month of Consultant Fees and such higher amount as reflects local territory rules, the contractual notice period of the Consultant and any other factor reasonably required by TopSource (including but not limited to the length of employment of the Consultant and/or statutory changes in the applicable local employment regulations).
- (f) **Implementation Fee:** the one-time payment for onboarding any Consultant (whether at the Commencement Date or at any time during the term of this Agreement, as applicable) and in any role (which may consist of the drafting of employment contract(s), access to any applicable Online Services and/or set-up fees for Consultant payroll arrangements), payable upon signing of the Order for Services Form and included within the first invoice to the Client.
- (g) **Monthly Service Fee:** the fee applied by TopSource for the provision of the Services in the amount as specified in the Order for Services Form and related to the Scope of Services, such fees to be subject to an annual increase annually in line with the UK's Retail Price Index.
- (h) **Off-Boarding Fee:** such sum as is detailed in the Service Order Form and/or as communicated to the Client by TopSource in writing, and is payable in the event that:
 - (i) the Client wishes to transfer the provision of the Services from TopSource to any other party (including for these purposes to an alternative EOR service provider and / or to the Client and / or to any Group Company of the Client); and/or
 - (ii) The Client wishes to terminate, under any circumstances, the employment of a Consultant.

Function(s): the function(s) to be undertaken by the relevant Consultant as detailed in the Specification.

"Group": in relation to a company:

- (a) that company, its subsidiaries, its holding companies and their subsidiaries;
- (b) an entity that owns or controls, is owned or controlled by or is under common control or ownership with that company from time to time, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise, and reference to "Group Company" shall be construed accordingly.

In Country Guidance: any material [issued by TopSource and/or any Affiliate] detailing any applicable guidance and/or HR procedures to be followed by the Client in the applicable Territory.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, 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: 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"): a form to be completed by the Client pursuant to clause 4.1.2 both:

- (a) prior to the Commencement Date; and
- (b) at any time during the term of this Agreement following TopSource's written request.

Local Entity: a 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: TopSource's Portico EoR and/or alternative online platform providing access to human resource data or supplier and customer data through an online portal accessed with User IDs and passwords.

Order for Services Form (or "Order"): the form on which an Order 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: a party to the Agreement as set out in the Order for Services Form.

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

RPI: the measure of consumer inflation produced by the United Kingdom's Office for National Statistics

Sanctions: any laws or regulations relating to economic or financial, trade, immigration, aircraft, shipping or other sanctions, export controls, trade embargoes or restrictive measures from time to time imposed, administered or enforced by a Sanctions Authority.

Sanctions Authority: the United Kingdom and / or the United Nations (UN) (and / or any other governmental authority with jurisdiction over a Party or any part of its business or operations and in each case their respective governmental, judicial or regulatory institutions, agencies, departments and authorities, including (without limitation) the UN Security Council, His Majesty's Treasury and the United Kingdom's Office of Financial Sanctions Implementation and Department of International Trade.

Sanctions Proceedings: any actual or threatened:

- (a) litigation, arbitration, settlement or other proceedings (including alternative dispute resolution, criminal and administrative proceedings); or
- (b) investigation, inquiry, enforcement action (including the imposition of fines or penalties) by any governmental, administrative, regulatory or similar body or authority,

in each case relating to, or in connection with, any actual or alleged contravention of Sanctions.

Services: the services, including the Employment Service, supplied by TopSource to the Client as set out in the Order for Services Form.

Services Period: the period for which the Services shall be supplied as detailed in the Order for Services Form.

Specification: the description or specification of the Services detailed in the Order for Services Form.

Territory: the territory detailed in the Order for Services Form.

TopSource: TOPSOURCE WORLDWIDE (GROUP) LIMITED, and/or its Affiliates (as applicable).

TopSource Materials: has the meaning set out in clause 4.1.7.

TopSource Policies: the policies set out at <https://topsourceworldwide.com/legal-compliance-portal/>

1.2 Interpretation:

1.2.1 Unless expressly provided otherwise in this Agreement, a reference to legislation or a legislative 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. BASIS OF AGREEMENT

2.1 The Order constitutes an offer by the Client to purchase the Services in accordance with these Conditions and the Data Protection Provisions.

2.2 The Order shall only be deemed to be accepted when the Parties countersign the Order for Services Form at which point and on which date the Agreement shall take effect under the Services covered by the Order for Services Form (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by TopSource, and any descriptions or illustrations contained in TopSource's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement or have any contractual force.

2.4 This Agreement, any Specifications or Orders to which the parties agree, and any amendments to this Agreement or any Specifications or Orders to which the parties agree, together constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior written and oral agreements between the parties regarding the subject matter hereof.

2.5 Any quotation given by TopSource shall not constitute an offer and is only valid for a period of 30 Business Days from its date of issue.

3. SUPPLY OF SERVICES

- 3.1 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 Specification in all material respects. 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).
- 3.2 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.
- 3.3 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.
- 3.4 TopSource warrants to the Client that the Services will be provided using reasonable care and skill and in accordance with Applicable Laws.
- 3.5 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):
- 3.5.1 the scope of such Ad-hoc Services; and
- 3.5.2 the relevant Ad-hoc Services Fee.

4. CLIENT'S OBLIGATIONS

- 4.1 The Client shall:
- 4.1.1 ensure that the terms of the Order and any information it provides in the Specification (including as to the Functions) are complete and accurate;
- 4.1.2 prior to receipt of the Services (and / or following written request by TopSource at any time during the term of this Agreement) 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:
- (i) all liabilities, costs, expenses, damages and losses; and
- (ii) all costs, losses, expenses, liabilities and damages as a result of any fines imposed by any applicable tax authorities; suffered or incurred by TopSource arising out of or in connection its reliance on the information provided by the Client (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses);
- 4.1.3 co-operate with each Consultant, TopSource, any Delivery Partner and their respective employees, agents, consultants and subcontractors in all matters relating to the Services and / or the Consultant Services;
- 4.1.4 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;
- 4.1.5 during the Term of this Agreement at all times ensure that the Client's legal entity is active and is authorised to trade;
- 4.1.6 obtain and maintain all necessary licenses, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 4.1.7 if applicable, 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;
- 4.1.8 treat the Consultants in a suitably professional manner in any dealings with them and in accordance with good business practice.
- 4.1.9 inform the Consultant about the nature of the Consultant's appointment and the relationship between TopSource and the Client before the Commencement Date and procure that the Consultant will cooperate with the onboarding process.
- 4.1.10 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;
- 4.1.11 provide accurate absence information (including but not limited to, annual leave, sick leave, maternity leave, paternity leave, parental leave, compassionate leave and/or any other applicable absence information of similar nature) related to the Consultant, promptly, as instructed by TopSource in writing from time to time;
- 4.1.12 comply with the TopSource Policies, if and when applicable;
- 4.1.13 comply with any additional obligations as set out in the Specification or elsewhere in these Conditions.
- 4.2 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**):
 - 4.2.1 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;
 - 4.2.2 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 4.2; and
 - 4.2.3 The Client shall indemnify TopSource against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by TopSource arising directly or indirectly out of or in connection with the Client Default.
- 4.3 The Client agrees that:
 - 4.3.1 any benefits required under the Applicable Laws of the Territory, or any supplemental benefits that the Client wishes to provide to each Consultant, shall be provided by TopSource at the Client's expense; and
 - 4.3.2 TopSource shall be required to comply with the provisions of Applicable Laws in the Territory with respect to:
 - (a) maternity and paternity benefits;
 - (b) employment protection requirements; and
 - (c) applicable background checks
 and that any costs incurred by TopSource in so complying shall be borne by the Client.
 - 4.3.3 the Client shall indemnify TopSource against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by TopSource arising directly or indirectly out of or in connection with the Client's breach of this clause 4.3.
- 4.4 The Client warrants and undertakes that the Client:
 - 4.4.1 will not for the duration of the Agreement, and for a period of 12 months following termination or expiry of the Agreement, without TopSource's express prior written permission, communicate or otherwise engage or have any business dealings with the Delivery Partner other than as permitted under the terms of the Agreement;
 - 4.4.2 has read and shall comply with the In Country Guidance.
 - 4.4.3 shall indemnify TopSource against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by TopSource arising directly or indirectly out of or in connection with the Client's breach of this clause 4.4.
- 5. **CONSULTANTS**
 - 5.1 Each Employment Agreement shall be subject to the Client's prior approval (such approval not to be unreasonably withheld or delayed).
 - 5.2 The parties acknowledge and agree that the Client shall refrain from performing any aspect of the Employment Services which shall be performed exclusively by TopSource unless the parties agree otherwise.
 - 5.3 In the event that the Client becomes aware of a Problem, the Client shall promptly notify, within five (5) Business Days, TopSource of the same (including sufficient detail for TopSource to be able to investigate the Problem) and shall instruct TopSource to either:

- 5.3.1 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 5.3.2 shall apply); or
- 5.3.2 (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.
- 5.4 In the event that the Client instructs TopSource pursuant to clause 5.3.2, 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:
- 5.4.1 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;
- 5.4.2 is not so permitted, TopSource shall (after first confirming the same to the Client) carry out such termination and the Client shall indemnify TopSource against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by TopSource arising directly or indirectly out of or in connection with that Employment Agreement being terminated in addition to any statutory payments due to the Consultant as defined by the employment laws of the Territory.
- 5.5 Subject to clause 5.6, 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:
- 5.5.1 indemnifying TopSource:
- (a) as detailed in clause 5.4.2 (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);
- 5.5.2 first paying to TopSource the Services Charge applicable to the notice period referred to.
- 5.6 Where the Client is procuring Services from TopSource and where the Client no longer requires the relevant Consultant to perform the Consultant Services;
- 5.6.1 the Client shall give TopSource a minimum of three months' written notice or observe the notice period set out in the relevant Employment Agreement (whichever is the longer) following which TopSource will immediately commence procedures to terminate the relevant Consultant's employment;
- 5.6.2 the Client acknowledges that the Agreement may only be terminated in the event that TopSource is able to effectively terminate the Employment Agreement in accordance with the Applicable Laws, including any local regulatory and employment laws, within the country in which the Services are performed; and
- 5.6.3 the Client acknowledges and agrees that if TopSource informs the Client that there are no grounds to terminate the employment of any Consultant in accordance with the applicable laws, TopSource will only be able to terminate the employment with the Consultant via a mutual termination agreement ("MTA") in respect of which:
- (a) the Consultant's agreement will be required;
 - (b) an appropriate and reasonable severance package will need to be detailed in the MTA, such package to be at a level recommended by TopSource to the Client (and in respect of which the Client shall not unreasonably withhold or delay its approval);
 - (c) the Client shall be responsible for all costs (including the severance package) and for the avoidance of doubt the Client acknowledges and agrees that the obligation set forth in this provision are subject to clause 11.5; and.
- 5.6.4 the Client shall indemnify TopSource against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by TopSource arising directly or indirectly out of or in connection with clauses 5.5.1, 5.5.2 and 5.6.
- 5.7 The parties acknowledge and agree that:
- 5.7.1 the Consultants are employees of TopSource and TopSource shall remain solely responsible for the administration of all salary, tax, National Insurance (or similar local tax), 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 this Agreement);
- 5.7.2 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.
- 5.7.3 the Client indemnifies TopSource against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by TopSource arising directly or indirectly out of or in connection with any work-related injury claims of the Consultant, in particular (but not limited to), where such claims:
- (a) are not covered by TopSource's work injury insurance coverage for the Consultant (including but not limited to, by way of example, circumstances where the Consultant is instructed by the Client to work in a different location and/or premises which are different from such location and / or premises referred to in the Employment Agreement); and / or
 - (b) would result in an increase to, or other adverse effect on, insurance premiums due and payable by TopSource.
- 5.7.4 neither Party shall take any action or instruct, persuade, entice, or otherwise influence the Consultant to take any action which:
- (a) would be illegal under English Law; or
 - (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) each Party (**Indemnifying Party**) shall indemnify, defend, and hold harmless the other Party (**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 5.7.4 (to the extent not caused or contributed to by an unlawful, negligent or wilful act or omission of the Indemnified Party).
- 5.8 TopSource confirms that it has in place satisfactory levels of insurance coverage and policies in effect during the duration of this Agreement with reputable insurance companies. Upon Client's request TopSource shall provide the relevant insurance details.
- 5.9 In the event that any legal determination regarding a Consultant under the Agreement is required (or any aspect of the applicable Employment Agreement, including but not limited to: tax benefits applicable to the Consultant in the Territory, specific requests for Intellectual Property clauses within the Employment Agreement, immigration matters, legal fees and/or costs related to termination disputes), 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 5 or as detailed elsewhere in these Conditions. The parties acknowledge and agree that any costs relating to the engagement of any such independent legal professionals shall be approved in advance by the Client and borne in full by the Client.
- 5.10 The Client acknowledges and accept that any termination of the employment shall be undertaken exclusively 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 and agreement of TopSource.

6. FEES AND PAYMENT

- 6.1 The Fees shall be subject to increase:
- 6.1.1 annually on the anniversary of the Commencement Date by any increase in RPI when compared to the RPI at the Commencement Date or the last anniversary thereof, as applicable; and
- 6.1.2 as detailed in the Order for Services Form.
- 6.2 The Client acknowledges and agrees that all Fees are subject to amendment if there are changes:
- 6.2.1 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
- 6.2.2 in market conditions in the Territory in respect of which TopSource may amend the Fees on thirty (30) days written notice to the Client to reflect any increase on the Consultant Fee in the event that the total employment cost increases as a consequence of:
- (a) a change in the employment regulations of the applicable country of employment; and / or
 - (b) any increase in the cost to TopSource of the provision of the Services.

- 6.3 All fees shall be invoiced in the relevant local currency in the Territory unless otherwise agreed by the parties in writing. The exchange rate shall be set by Ebury at the time of the relevant transaction or by such other exchange rate data provider or bank exchange rate, as determined by TopSource in its sole discretion from time to time.
- 6.4 Unless otherwise stated in the Order Form, the Client shall pay the Deposit, and any subsequent Deposit in full and in cleared funds to a bank account nominated in writing by TopSource within 7 days of receipt of the relevant invoice from TopSource and in any event before the starting date of the Employment Agreement with the Consultant in accordance with the specification of the Order Form. The Deposit is required to cover payroll and severance pay liabilities for Consultants and is an amount payable per Consultant. The Deposit is dependent upon local territory rules, contractual notice period of the Consultant and is subject to increase where the Client requires an increased number of Consultants under the Agreement. If:
- 6.4.1 termination and / or expiry of this Agreement gives rise to any costs and / or liability for TopSource (including but not limited to any costs of terminating any applicable Employment Agreement); and / or
- 6.4.2 the Client: fails to pay any Fees in accordance with the Agreement, TopSource shall be entitled to apply the Deposit against such default. The Client shall pay to TopSource any sums deducted from the Deposit within seven (7) Business Days of written demand for the same.
- 6.5 TopSource shall invoice the Client, and the Client shall pay each invoice submitted by TopSource, as detailed in the Order for Services Form. Time for payment shall be of the essence of the Agreement. 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.
- 6.6 All amounts payable by the Client under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Agreement by TopSource to the Client, the Client shall, on receipt of a valid VAT invoice from TopSource, pay to TopSource 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.
- 6.7 If the Client fails to make a payment due to TopSource under the Agreement by the due date, then, without limiting TopSource's remedies under clause 10:
- 6.7.1 the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.7 will accrue each day at 8% a year above the Bank of England's base rate from time to time; and
- 6.7.2 TopSource reserves the right to charge the Administration Fee which shall be payable by the Client to TopSource within seven (7) Business Days of written demand for the same.
- 6.8 All amounts due to TopSource 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).
- 6.9 Any remaining Deposit will be returned to the Client following termination and / or expiry of this Agreement.
- 7. INTELLECTUAL PROPERTY RIGHTS**
- 7.1 All intellectual property rights belonging to a Party prior to the execution of this Agreement shall remain vested in that Party.
- 7.2 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.
- 7.3 All Intellectual Property Rights created by the Consultants in performing the Consultant Services under this 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 and/or external counsel's legal fees are necessary in order to execute such assignment according to the Applicable Law, TopSource shall not take any action without the Client's approval of these potential costs (such approval not to be unreasonably withheld or delayed).
- 7.4 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.
- 7.5 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 7.4.
- 7.6 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.
- 7.7 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.

8. DATA PROTECTION

8.1 The parties agree to comply with the provisions in the Data Protection Provisions.

9. LIMITATION OF LIABILITY

9.1 Nothing in this clause 9 shall limit:

9.1.1 The Client's payment obligations under the Agreement;

9.1.2 The Client's liability pursuant to the indemnities in clauses 4.1.2, 4.2.3, 4.3.3, 4.4.3, 5.4.2, 5.5.1, 5.6.4, 5.7.2, 5.7.3, 6.5, 7.7., 11.2 and 11.4.3(b);

9.1.3 TopSource's liability pursuant to the indemnity in clause 5.7.1;

9.2 Nothing in the Agreement limits either Party's liability:

9.2.1 pursuant to the indemnity in paragraph 9 of the DPP;

9.2.2 for death or personal injury caused by negligence;

9.2.3 for fraud or fraudulent misrepresentation; or

9.2.4 for breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or

9.2.5 for any other liability that cannot be limited at law.

9.3 Subject to clause 9.1 and clause 9.2, this clause 9.3 sets out the types of loss that are wholly excluded:

9.3.1 loss of profits

9.3.2 loss of sales or business.

9.3.3 loss of agreements or contracts.

9.3.4 loss of anticipated savings.

9.3.5 loss of use or corruption of software, data, or information.

9.3.6 loss of or damage to goodwill; and

9.3.7 indirect or consequential loss.

9.4 Subject to clauses 9.1, 9.2 and 9.3, each Party's maximum aggregate liability to the other Party under the Agreement shall be limited to 125% (one hundred and twenty five percent) of the Fees paid and payable by the Client in respect of the element of the Services that is the subject of the liability during the twelve (12) month period immediately prior to such liability arising.

9.5 TopSource has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

9.6 This clause 9 shall survive termination of the Agreement.

10. TERMINATION

10.1 Following an initial term of six (6) months from the Commencement Date and without affecting any other right or remedy available to either Party :

10.1.1 either Party may terminate this 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;

10.1.2 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.

10.2 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:

10.2.1 the other Party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing to do so;

10.2.2 the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, 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;

10.2.3 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

10.2.4 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.

10.3 Without affecting any other right or remedy available to it, TopSource may:

- 10.3.1 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:
 - (i) there is a change of Control of the Client; or
 - (ii) the Client has failed to submit an appropriately completed KYC in accordance with clause 4.1.2; or
 - (iii) the Client is, or TopSource has reasonable grounds to suspect that the Client is, in breach of Applicable Laws and/or is subject to Sanctions and/or its obligations under clause 12.1; or
 - (iv) at any time during the term of the Agreement and the supply of the Services, TopSource becomes aware of any circumstances in relation to the Client that may (in TopSource's reasonable opinion) expose TopSource to a potential breach of any applicable anti-money laundering laws and / or guidance.

- 10.3.2 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 10.2.2 to clause 10.2.4, 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 10.3.1(b)(iii) and / or 10.3.1(b)(iv)

11. CONSEQUENCES OF TERMINATION

11.1 On termination or expiry of the Agreement the Client shall:

11.1.1 immediately pay to TopSource:

- (a) all of TopSource's outstanding unpaid invoices and interest;
- (b) any Fees and / or costs and / or liabilities that accrue from the period commencing on the date of service of the termination notice until the date of termination of the applicable Employment Agreement with the applicable Consultant pursuant to any applicable laws and/or in accordance with any MTA and / or any other liability pursuant to clause 5.6.3; and
- (c) in respect of Services supplied for which no invoice has been submitted;

in relation to which TopSource shall submit an invoice, which shall be payable by the Client immediately on receipt;

11.1.2 indemnify TopSource against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by TopSource arising out of or in connection with the Client terminating this Agreement and / or TopSource having to terminate the Consultants' Employment Agreements.

11.1.3 return, if any, 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.

11.2 Where termination is pursuant to clause 10.1.2, 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 10.1.2) and the Client warrants that it is authorised and empowered to make such request. Within thirty (30) days of receipt of such notice by TopSource, the Client shall take any action required by the Applicable Laws to transfer the employment of the Consultant from TopSource to the Client's Local Entity. For this purpose the Parties agree on the following:

11.2.1 TopSource shall provide the Client with all necessary information related to the Consultant's previous employment with TopSource;

11.2.2 the Client shall produce the Job Offers for each Consultant that desires to transfer;

11.2.3 the Client, subject to the Applicable Law, shall procure that the Local Entity shall honour the terms of such Job Offers and provide employment conditions to the applicable Consultants which are commensurate with the applicable Employment Contract (save as permitted to be varied under the Applicable Laws)

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 11.2. When and if applicable, TopSource reserves the right to invoice for the Off-Boarding Fee arising in relation to this clause 11.2 which shall be calculated based on the transfer to the Client's Local Entity of all the Consultants referred to in such notice.

11.3 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).

11.4 The parties acknowledge and agree that Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply to Consultants upon their transfer to the Client (or the Local Entity as applicable) if the Territory is within the European Union or the UK, and accordingly.

11.4.1 TopSource shall upon the Client's reasonable request provide to the Client (or the Local Entity as applicable) all information in respect of such Consultants in accordance with Regulation 11 of TUPE and such other information as the Client (or the Local Entity as applicable) may reasonably require relating to the terms of employment, pension, life cover, arrangements or any other benefits provided to Consultants through their employment with TopSource;

11.4.2 Subject to clause 11.4.3, TopSource warrants that it will:

- (a) not initiate, suggest or make any changes to the terms and conditions of Employment Agreements of such Consultants without the Client's prior written consent; and
- (b) comply in full with any obligations to inform and consult with such Consultants or their representatives arising out of Regulation 13 of TUPE or otherwise;

11.4.3 Notwithstanding the provisions of clause 11.4.2, the Client:

- (a) acknowledges and agrees that TopSource may have to amend the terms and conditions of Employment Agreements of Consultants due to legal or regulatory requirements in the Territory (and that TopSource shall have the right to make such changes at its sole discretion and shall inform the Client of such changes as soon as practicable);
- (b) shall indemnify TopSource against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs, calculated on a full indemnity basis, and all other reasonable professional costs and expenses) suffered or incurred by TopSource arising out of or in connection with any failure by the Client (or the Local Entity as applicable) to perform and discharge any obligation and against any claims in respect of any Consultants that transfer to the employment of the Client (or the Local Entity as applicable) by virtue of TUPE (or any other applicable or equivalent employment legislation or regulations in the Territory) or the Client exercising the Client's rights under clause 11.2 arising from or as a result of:
 - (i) any act or omission by the Client (or the Local Entity as applicable) relating to a transferring Consultant occurring on or after the date on which the Consultant ceases to be TopSource's employee; and
 - (ii) all and any claims in respect of all emoluments and outgoings in relation to the transferring Consultants (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the date on which any such Consultant ceases to be TopSource's employee.

11.5 Termination or expiry of 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 which existed at or before the date of termination or expiry.

11.6 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.

12. GENERAL

12.1 Bribery and Corruption:

12.1.1 Each Party represents and warrants that:

- (a) to the best of its knowledge, neither it nor any of its directors, employees, agents, representatives, contractors or sub-contractors has at any time prior to entering into this Agreement, committed an offence under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906, the Prevention of Corruption Act 1916, the Bribery Act 2010 or any legislation or common law anywhere in the world creating offences in respect of bribery or fraudulent or corrupt acts;
- (b) it shall not offer nor give nor agree to give to any third party any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; nor
- (c) it shall not enter into this Agreement if in connection with it commission has been paid or agreed to be paid by it or on behalf or to its knowledge to, unless before this Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the other Party.

12.1.2 Each Party further represents and warrants that it shall:

- (a) comply with all applicable laws, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
 - (b) have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements (and shall provide a copy of the same to the Customer upon request and/or allow the Customer to undertake an audit to confirm the Supplier's compliance);
 - (c) ensure that all persons associated with it or other persons who are performing services in connection with this Agreement comply with this clause 12.1; and
 - (d) within three months of the date of this Agreement, and annually thereafter, certify to the other Party in writing (signed by a partner or officer of such Party), compliance with this clause 12.1 by it and all persons associated with it and shall provide such supporting evidence of compliance as the other Party may reasonably request.
- 12.1.3 For the purpose of this clause 12.1, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.
- 12.2 **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 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 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.
- 12.3 **Assignment and other dealings.**
- 12.3.1 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.
- 12.3.2 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.
- 12.4 **Confidentiality.**
- 12.4.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients, or suppliers of the other party, except as permitted by clause 12.4.2.
- 12.4.2 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 12.4; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.4.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.
- 12.5 **Entire agreement.**
- 12.5.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. 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.
- 12.5.2 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.
- 12.5.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 12.5.4 The Agreement is drafted in the English language. If this Agreement is translated into any other language, the English language version shall prevail.
- 12.6 **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).
- 12.7 **Waiver.** A 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 remedy. 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.

- 12.8 **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 this Agreement. If any provision or part-provision of this Agreement deleted under this clause 12.8 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.
- 12.9 **Notices.**
- 12.9.1 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 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.
- 12.9.2 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 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 12.9.3 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.
- 12.10 **Third party rights.**
- 12.10.1 Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 12.10.2 The rights of the parties to rescind or vary the Agreement are not subject to the consent of any other person.
- 12.11 **Disputes.** In the event of any dispute arising under the Agreement the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be appointed by CEDR. No party may commence court proceedings in respect of any dispute arising out of the Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated, or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 12.12 **Governing law and jurisdiction.** The Agreement shall be governed by, and construed in accordance with, the law of England and Wales. Subject to clause 12.11, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.