

TOPSOURCE PAYROLL & ACCOUNTANCY TERMS AND CONDITIONS

The TopSource Payroll and Accountancy Terms and Conditions are incorporated into and subject to the Agreement between TopSource Worldwide (UK) 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:

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 as apply to the provision of the Services by TopSource.

Authorised Persons: the persons or categories of persons that the Client authorises to give TopSource written personal data processing instructions as identified in the Order for Services Form and from whom TopSource agrees to accept such instructions.

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

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

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

Charges: the charges for the supply of the Services detailed Order for Services Form and payable by the Client in accordance with Clause 5 (Charges and Payment).

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 11.5.

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

Data Protection Provisions (“DPP”): 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.

Data Protection Legislation: as defined in the Data Protection Provisions.

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

Initial Term: the initial term of the Agreement as specified in the Order for Services Form.

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.

Know your Client Survey (“KYC”): a form to be completed by the Client prior to the delivery of Services, in accordance with clause 4.1.2.

Online Service: TopSource’s 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 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: a party to the Agreement as set out in the Order for Services Form.

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

Relevant Requirements: means all applicable laws, regulations, codes, and sanctions relating to:

- (a) anti-bribery and anti-corruption including the Bribery Act 2010; and
- (b) money laundering including the Proceeds of Crime Act 2002 and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and the Sanctions and Anti-Money Laundering Act 2018.

Renewal Period: has the meaning specified in the Order for Services Form.

Services: the services supplied by TopSource to the Client as set out in the Order for Services Form (including, if set out in the Order(s), payroll, accountancy and/or Online Services).

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

Term: the Initial Term and any Renewal Period.

TopSource: TOPSOURCE WORLDWIDE (UK) LIMITED and/or its affiliated companies.

TopSource Materials: has the meaning set out in clause 4.1.6.

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

Virus: anything or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware, network, or any telecommunications service; or adversely affect the user experience;

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

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 Charges and the Client's submission of an appropriately completed KYC, with effect from the Commencement Date, TopSource undertakes to supply the Services to the Client for the Term:

3.1.1 in accordance with the Specification in all material respects;

3.1.2 using reasonable care and skill; and

3.1.3 in accordance with Applicable Laws.

3.2 The undertaking in clause 3.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to TopSource's instructions, or modification or alteration of the Services by any party other than TopSource or TopSource's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, TopSource will, at its expense, use reasonable endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution shall be the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 3.1. Notwithstanding the above, TopSource:

3.2.1 does not warrant that the Client's use of the Services will be uninterrupted or error free; nor that the Services and/or the information obtained by the Client through the Services will meet the Client's requirements; and

- 3.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the salary payment processing, transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 3.3 TopSource shall use its reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.4 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.
- 3.5 In the event that the Services include the Online Service, TopSource warrants to the Client that the Online Service will conform in all material respects with its description as set out in the Order and grants to the Client a non-exclusive, non-transferable right to permit the Authorised Users to use the Online Service during the Term solely for the Client's internal business operations. Subject to clause 3.6, if the Client gives notice in writing to TopSource that the Online Service does not comply with the warranty set out in this clause 3.5 then TopSource shall remedy the Online Service so that it complies with the warranty or where after a reasonable time it is unable to do so, TopSource shall refund the such of the Charges relating to the Online Service that have been paid (less a reasonable sum, as applicable, for any use of Online Service during a period where it did comply with the warranty).
- 3.6 TopSource shall not be liable for the Software's failure to comply with the warranty set out in clause 3.5 upon the occurrence of one or more of the following events:
- 3.6.1 The Client makes any further use of the Online Service after giving notice in accordance with clause 3.5;
- 3.6.2 The defect arises because the Client failed to follow TopSource's oral or written instructions as to the use and maintenance of the Online Service; and/or
- 3.6.3 The Client modifies or alters the Online Service without the written consent of TopSource.
- 3.7 Where TopSource remedies the Online Service or provides a refund in accordance with clause 3.6, then TopSource shall have no additional liability to the Client in respect of the Online Service's failure to comply with the warranty set out in clause 3.5.
- 3.8 For the avoidance of doubt, the Client acknowledges and agrees that TopSource shall not be responsible for any failure to provide the Services arising from the inability of any third party (including but not limited to Royal Mail, BACS and banks or any part of the banking system) to receive, transmit or execute data, howsoever arising.

4. **CLIENT'S OBLIGATIONS**

- 4.1 The Client shall:
- 4.1.1 ensure that the terms of the Order and any information the Client provides in the Specification are complete and accurate;
- 4.1.2 prior to receipt of the 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;
- 4.1.3 co-operate with TopSource and its employees, agents, consultants and subcontractors in all matters relating to the Services;
- 4.1.4 provide TopSource and its employees, agents, consultants and subcontractors with:
- (a) access to such facilities as are reasonably required in order to supply the Services;
 - (b) such information and materials as may be reasonably required in order to supply the Services, and ensure that:
- (i) The Client are wholly responsible for verifying and validating the final payroll prior to giving approval to TopSource for processing. Any errors and omissions, regardless of source of such errors or omissions, that are processed by TopSource thereafter are solely the Client's responsibilities;
 - (ii) by approving the payroll, the Client is confirming that they have reviewed, at minimum that (i) no former employees are included in the payroll; (ii) all employees' bank details are correct; (iii) all new employees are included in the payroll; (iv) gross pay amounts for each employee are in line with expectations; (v) total company pay is in line with the Client expectations; and (vi) any adjustments have been completed as requested; and
 - (iii) any change to such information is promptly notified to TopSource and its employees, agents, consultants and subcontractor;
- 4.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start and comply with all applicable laws and regulations with respect to the Client's activities under the Agreement, including the Relevant

- Requirements (and if reasonably requested by TopSource shall provide such evidence as TopSource may require this to demonstrate compliance with the Relevant Requirements);
- 4.1.6 keep all materials, equipment, documents, and other property of TopSource (**TopSource Materials**) at the Client's premises in safe custody at its 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; and
 - 4.1.7 comply with the TopSource Policies, and any other additional obligations as set out in the Specification or elsewhere in these Conditions.
 - 4.2 In the event that the Services include the Online Service, the Client:
 - 4.2.1 shall 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;
 - 4.2.2 shall 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;
 - 4.2.3 shall 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;
 - 4.2.4 except as may be allowed by any applicable law which is incapable of exclusion by Agreement between the parties:
 - (a) and except to the extent expressly permitted under this Agreement, shall not 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
 - (b) shall not attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of Online Service;
 - 4.2.5 shall not access all or any part of the Online Service in order to build a product or service which competes with the Online Service;
 - 4.2.6 subject to clause 4.2.4, shall not 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;
 - 4.2.7 shall not attempt to obtain, or assist third parties in obtaining, access to the Online Service, other than as provided under this clause 4.2;
 - 4.2.8 shall 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;
 - 4.2.9 acknowledges and agrees that 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.
 - 4.3 In the event that the Services include the Online Service, in relation to Authorised Users, the Client:
 - 4.3.1 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;
 - 4.3.2 acknowledge and agree 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;
 - (b) 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;
 - (c) 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.
 - 4.3.3 shall ensure that the Authorised Users use the Online Service in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
 - 4.3.4 shall 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
 - 4.3.5 acknowledge and agrees that TopSource may audit compliance with this clause 4.3 on reasonable prior notice, in such a manner as not to substantially interfere with the Client's normal conduct of business.
 - 4.4 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**):

- 4.4.1 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 remedies 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;
- 4.4.2 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
- 4.4.3 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.

5. **CHARGES AND PAYMENT**

- 5.1 The Charges shall be subject to increase as detailed in the Order for Services Form.
- 5.2 The Client acknowledges and agrees that all Charges are subject to amendment if there are changes to the Client's requirements for the Services (such changes to requirements and the amended Charges to be subject to prior written agreement, such agreement not to be unreasonably withheld or delayed).
- 5.3 All Charges shall be invoiced in the currency stated in the Order for Services Form.
- 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. Time for payment shall be of the essence of the Agreement on a monthly basis during the Term. The Client shall indemnify TopSource against all loss or damage that results from any failure and / or late payment of any invoice under the Agreement.
- 5.5 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.
- 5.6 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 9, 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 5.6 will accrue each day at 4% a year above the prevalent lending rate of the relevant Territory from time to time, but at 4% a year for any period when that base rate is below 0%.
- 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).

6. **INTELLECTUAL PROPERTY RIGHTS**

- 6.1 All intellectual property rights belonging to a Party prior to the execution of this 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 TopSource grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free licence 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.
- 6.4 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 6.3.
- 6.5 The Client grants TopSource a fully paid-up, non-exclusive, royalty-free, non-transferable licence 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.
- 6.6 The Client shall defend at its 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. **DATA PROTECTION**

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

8. LIMITATION OF LIABILITY

8.1 Nothing in this clause 8.1 shall limit:

8.1.1 The Client's payment obligations under the Agreement;

8.1.2 The Client's liability pursuant to the indemnities in clauses 4.1.2, 5.4, 6.6 and 10.2.3;

8.2 Nothing in the Agreement limits either party's liability:

8.2.1 pursuant to the indemnity in paragraph 14 of the DPP;

8.2.2 for death or personal injury caused by negligence;

8.2.3 for fraud or fraudulent misrepresentation; or

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

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

8.3 Subject to clause 8.1 and clause 8.2, this clause 8.3 sets out the types of loss that are wholly excluded:

8.3.1 loss of profits

8.3.2 loss of sales or business.

8.3.3 loss of agreements or contracts.

8.3.4 loss of anticipated savings.

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

8.3.6 loss of or damage to goodwill; and

8.3.7 indirect or consequential loss.

8.4 Subject to clauses 8.1, 8.2 and 8.3, 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 Charges 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.

8.5 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 Contract.

8.6 This clause 8 shall survive termination of the Agreement.

9. TERMINATION

9.1 The Agreement shall commence on the Commencement Date and shall continue, unless otherwise terminated as provided in this clause 9, for the Initial Term and thereafter shall be automatically renewed for successive Renewal Periods unless either party notifies the other party of termination in writing at least 90 (ninety) days before the end of the Initial Term or the applicable Renewal Period (and in such circumstances the Agreement shall terminate on the expiry of the Initial Term or the applicable Renewal Period).

9.2 Without affecting any other right or remedy available to either party:

9.2.1 either party may terminate the Agreement wholly or in part by giving the other party 3 months' written notice;

9.2.2 TopSource may terminate the Agreement on immediate written notice to the Client in the event that TopSource is unable to complete its KYC checks in respect of the Client and any of the Client's relevant employees (where necessary) to the extent required to comply with applicable legal, tax and regulatory requirements and codes of practice.

9.3 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:

9.3.1 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;

9.3.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (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;

9.3.3 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

- 9.3.4 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.
- 9.4 Without affecting any other right or remedy available to it, TopSource may:
- 9.4.1 terminate the Agreement with immediate effect:
- (a) by giving 90 (ninety) days written notice to the Client if TopSource discontinues the provision of any of the Services across its business (such notice to expire no earlier than the expiry of the Initial Term);
 - (b) 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;
 - (c) by giving written notice to the Client if the Client has failed to submit an appropriately completed KYC in accordance with clause 4.1.2; or
 - (d) by giving written notice to the Client if:
 - (i) there is a change of control of the Client; or
 - (ii) the Client breaches, or TopSource reasonably believes that the Client has or will breach, any of the Relevant Requirements;
- 9.4.2 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 9.3.3 to clause 9.3.4, 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 9.3.2.

10. CONSEQUENCES OF TERMINATION

- 10.1 On termination or expiry of the Agreement:
- 10.1.1 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;
- 10.1.2 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;
- 10.2 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.
- 10.3 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.

11. GENERAL

- 11.1 **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 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.
- 11.2 **Assignment and other dealings.**
- 11.2.1 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.
- 11.2.2 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.
- 11.3 **Confidentiality.**
- 11.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3.2.
- 11.3.2 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 11.3; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.
- 11.4 **Entire agreement.**
- 11.4.1 The Agreement and its schedules constitute 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 the Conditions and the terms included in the Order for Services Form, the terms in the Order for Services Form shall prevail.
- 11.4.2 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.
- 11.4.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 11.5 **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).
- 11.6 **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.
- 11.7 **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 11.7 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.
- 11.8 **Notices.**
- 11.8.1 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) detailed in the Order.
- 11.8.2 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 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 11.8.2(c), 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.
- 11.8.3 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.
- 11.9 **Third party rights.**
- 11.9.1 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.
- 11.9.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 11.10 **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.
- 11.11 **Governing law and jurisdiction.** The Agreement shall be governed by, and construed in accordance with, the law of England and Wales. Subject to clause 11.10, 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.