



## TOPSOURCE WORLDWIDE SERVICES GENERAL TERMS AND CONDITIONS

The TopSource Worldwide Services General 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 General 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.
- (d) Annex

**Annex:** means the applicable annex covering the services detailed in the relevant Order covering the specific provisions applicable to service requested by the client and attached to these Conditions representing, together with TopSource Order for Services Form and the Data Protection Provisions, the full agreement between the parties. The Annexes will include:

i) **Annex 1** – EOR Services

ii) **Annex 2** – UK and Global Payroll Services

iii) **Annex 3** – Entity Solutions Services

iv) **Annex 4** – HR Advisory Services

v) **Annex 5** – Talent Acquisition Services

**Applicable Laws:** such laws 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 Default:** any failure by the Client to pay the agreed employment cost, to cover any applicable termination cost, or any Client's failure to perform any of its obligations under this Agreement.

**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 as applicable in accordance with the type of services being provided

**Deliverables:** the deliverables set out in the Order for Services Form and under the Scope of Service as the case may be produced by TopSource for the Client.

**Delivery Partner:** TopSource's delivery partner (whether partly or wholly owned by TopSource or acting as its subcontractor) as elected from time to time by TopSource as the case may be, that is located in the Territory and through which TopSource may provide the 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 5 (Fees and payment) and with the specific provisions contained in the relevant Annex.

**"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.

**"Initial Term":** the initial term of the Agreement as specified in the Order for Services Form. The Initial Term will serve as a lock-in period during which the relevant



Order cannot be terminated by the Client. In case of an early termination during the Initial Term, the Client shall pay the remainder of the agreed fees until the expiry of the Initial Term.

**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, payroll processing, or supplier and customer data through an online portal accessed with User IDs and passwords.

**Order for Services Form (or “Order”):** the order 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.

**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:** shall mean 12-month periods or as otherwise specified in the Order for Services Form as the case may be. In case of an early termination prior to the end of the Renewal Period, the Client shall pay the remainder of the agreed fees until the expiry of the Renewal Period.

**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 supplied by TopSource to the Client as set out in the Order for Services Form and as detailed under the relevant Annexes below including Payroll Services, Entity Solution Services, HR Advisory Services and Talent Acquisition Services.

**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.

**Territory or Country of Service:** the territory detailed in the Order for Services Form.

**TopSource:** TOPSOURCE WORLDWIDE (GROUP) LIMITED, and/or its affiliated companies as specified in the relevant Order.

**TopSource Online Information and Service Terms:** the applicable terms and conditions for the provision of the services and any additional information as available 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, the relevant Annex 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 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.

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 the performance of the Services.

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 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.

3.6 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 (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 is signed by an officer of the Client; and contains accurate and up to date information completed to the satisfaction of TopSource. The Client shall cover any proven cost incurred by TopSource as imposed by the relevant authority arising out of or in connection with TopSource reliance on the information provided by the Client;

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.
- 4.1.5 during the Term of this Agreement at all times ensure that the Client's legal entity is active, authorised to trade and enter into this Agreement;
- 4.1.6 if and when applicable, 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 if and when applicable and provided by TopSource in writing to the Client, comply with the TopSource policies, and any other 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:
  - 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 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;
  - 4.2.2 Any costs arising out of Client Default shall be covered by the Client.
- 4.3 TopSource shall comply with the provisions of Applicable Laws in the Territory of the Services as agreed with Client in the relevant Order.
- 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;

## 5. FEES AND PAYMENT

- 5.1 The Fees shall be subject to increase:
  - 5.1.1 annually in the month of January in line with the UK's Retail Price Index; and
  - 5.1.2 as detailed in the Order for Services Form.
- 5.2 The Client acknowledges and agrees that all Fees are subject to amendment if there are changes 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).
- 5.3 All Fees shall be invoiced in the currency stated in the Order for Services Form.
- 5.4 The Client hereby acknowledges and agrees that whilst these Conditions are entered with TopSource Worldwide Group Limited, the invoicing TopSource entity will be as specified in the relevant and countersigned Order.
- 5.5 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 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.
- 5.6 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) . any other local indirect taxes that may levied by local government, when work is performed in a foreign jurisdiction ("Tax Items"). 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. Tax Items shall be included with no markup, in TopSource's invoices, and shall be Client's sole responsibility. TopSource reserves the right to increase the sums payable to reflect relevant changes to such tax items and/ or the imposition of particular taxes
- 5.7 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 this Agreement the Client shall pay any applicable statutory interest rate for commercial agreements under the UK law on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.
- 5.8 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 (the "DPP") as provided by TopSource and available at <https://TopSourceworldwide.com/legal-compliance-portal/>.
- 7.2 The Parties acknowledge that the DPP are based on UK and EU mandatory Standard Contractual Clauses ("SCC") and GDPR Regulations and TopSource's specific internal processes.

### 8. LIMITATION OF LIABILITY

- 8.1 The Parties hereby acknowledge and agree that should a Party breach any of its obligations under this Agreement, any proven cost and/ or damage arising out of or relating to such breach shall be covered by the breaching Party.
- 8.2 Nothing in the Agreement limits either Party's liability for any liability that cannot be limited at law such as but not limited to breach of Data Protection obligations, for death or personal injury caused by negligence of a Party, for fraud or fraudulent misrepresentation.
- 8.3 The Parties acknowledge and agree that the following types of loss 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 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.
- 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. TERM AND TERMINATION



- 9.1 The Agreement shall commence on the Commencement Date for the Initial Term provided under the Order and thereafter shall be automatically renewed for successive Renewal Periods of 12 months unless either Party notifies the other Party of termination in writing at least 90 (ninety) days before the end of the Initial Term or of 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 it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 9.2.1 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;
- 9.2.2 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;
- 9.2.3 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
- 9.2.4 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.
- 9.3 Without affecting any other right or remedy available to it, TopSource may:
- 9.3.1 terminate the Agreement:
- (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) with immediate effect, 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) with immediate effect, by giving written notice to the Client if:
    - (i) there is a change of control of the Client and the new controller is not responsive and does not commit to the obligations contained under the Agreement; or
- 9.3.2 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 9.3.1 (d) (i) or TopSource reasonably believes that the Client is about to become subject to any of them.

## 10 CONSEQUENCES OF TERMINATION

- 10.1 On termination or expiry of the Agreement:
- 10.1.1 the Client shall immediately pay TopSource for 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;
- 10.2 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 Bribery and Corruption:

- 11.1.1 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 and 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.

11.1.2 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 11.1; 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 11.1 by it and all persons associated with it and shall provide such supporting evidence of compliance as the other Party may reasonably request.

11.1.3 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.

**11.2 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.

**11.3 Assignment and other dealings.**

Either Party 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, to any affiliated company belonging to the same group of companies. In such event the assigning Party shall inform the other Party within 30 days and shall remain liable towards the other Party"

**11.4 Confidentiality.**

11.4.1 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 11.4.2.

11.4.2 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 11.4; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

**11.5 Entire agreement.**

11.5.1 The Agreement and its schedules and Annexes 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 and the Service Annex, the terms in the Order for Services Form and the relevant Service Annex shall prevail.

11.5.2 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.



- 11.6 **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).
- 11.7 **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 default. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.8 **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 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.
- 11.9 **Notices.**
- 11.9.1 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) detailed in the Order.
- 11.9.2 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 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 11.9.2(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.
- 11.9.3 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.
- 11.9.4 **Electronic Communications**
- The Parties accept and acknowledge that inherent risks exist in communications with each party by electronic mail or transmission of documents in electronic format (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices).
- 11.10 **Third party rights.**
- 11.10.1 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.
- 11.10.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 11.10.3 **Independent Contractor**
- It is understood and agreed that each of the parties hereto is an independent contractor and that neither party is or shall be considered an agent, distributor or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner
- 11.11 **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.
- 11.12 **Marketing Activities.** The client hereby acknowledges and agrees that TopSource might use Client's name and logo for marketing purposes, such as but not limited to, case studies, testimonials, references, etc. The Client hereby grants TopSource the right to use the Client's name and logo for any such marketing purposes.
- 11.13 **Storage of Documents**
- 11.13.1 Subject to the relevant scope of service under the relevant Order, and in accordance with the applicable statutory requirements TopSource shall keep in safe custody Client's files relating to the services which will be accessible to the Client for the term of the Agreement.



11.13.2 The Client hereby acknowledges and agrees that in accordance with any statutory requirements under the applicable local laws, TopSource may retain in safe custody Client's files for statutory auditing purposes for any statutory period of time even after termination of this Agreement for whatever reason may occur.

11.13.3 The Parties acknowledge and agree that any Client's files or papers retained or kept by TopSource for the purposes of this Agreement and as requested by the applicable local laws shall be subject to confidentiality obligations.

11.13.4 Upon expiration of this Agreement or of any applicable statutory retention period TopSource shall return any files and papers to the client at Client's expenses and/or deleted and/or destroy any such files or papers as applicable.

#### 11.14 **Non-Solicitation**

The Parties agree not to solicit, offer employment to, nor use (either directly or indirectly and whether as an employee, consultant, contractor or sub-contractor) the services of any employee, vendors, in-country partners of the other party (or any of its subsidiary or holding companies, as defined by the Companies Act 2006) who is involved in the provision or the receipt of the services being provided for the term of the Agreement and for a period of 12 months from the date of its termination or expiry. This restriction shall not prevent either Party from employing anyone who has responded to bona fide recruitment advertising.

11.15 **Governing law and jurisdiction.** The Agreement shall be governed by, and construed in accordance with, the law of England and Wales. Subject to clause 11.11, 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.