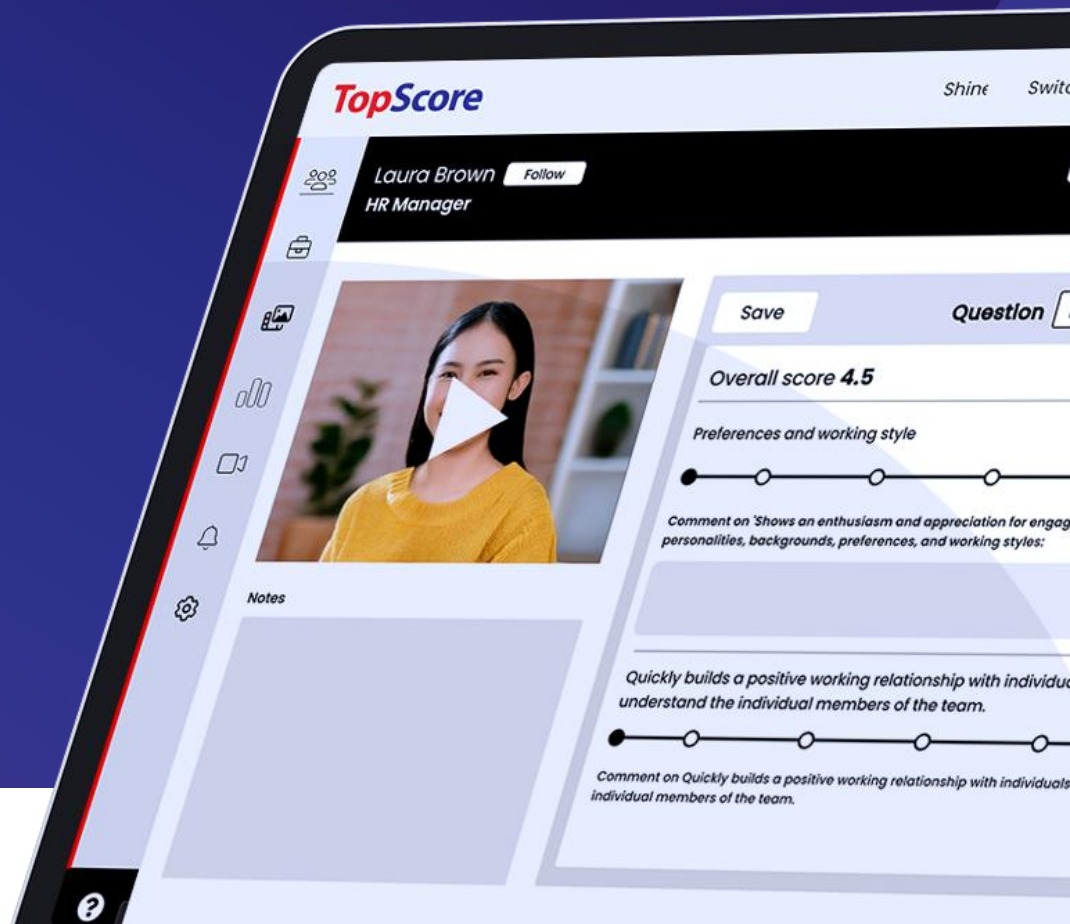


# TopScore

OneWay video interviewing platform

Supply of services order form

G-Cloud 15



| TopScore Information |  |        |  |
|----------------------|--|--------|--|
| Contact:             |  | Tel:   |  |
|                      |  | Email: |  |

| Customer Information |  |                      |  |
|----------------------|--|----------------------|--|
| Company Name:        |  | Registration Number: |  |
| Company Address:     |  |                      |  |
| Contact:             |  | Tel:                 |  |
|                      |  | Email:               |  |

| Schedule of Services                                                                                                                                                                                 |                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| Subscription Details                                                                                                                                                                                 | Cost                                                                                |
| <p>Annual Licence Fee - Access to the Oneway platform for the term defined below.</p> <p>_____ commenced video interviews per annum.</p> <p>Hosting, ongoing software updates, and user support.</p> | <p>£_____ +VAT per annum, to be invoiced upon this agreement coming into force.</p> |

| Contract Restrictions                                                                                                                                                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. This Contract is made up of the following:</p> <p>(a) This Order Form; and</p> <p>(b) Our Terms and Conditions, enclosed at Schedule 1.</p> <p>2. If there is any conflict or ambiguity between this Order Form and our Terms and Conditions, this Order Form shall have priority.</p> |

| Term                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>This agreement shall come into force upon the effective date of the date that this agreement is signed by both parties, for a period of 12 months.</p> <p>Renewal Fee - £1500 +VAT – the renewal fee covers administration from TopScore in terms of further training at the point of renewal and will be charged in addition to the Annual License Fee.</p> |

| Payment Terms                                                                                                                                                                                                                                                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>TopScore will raise an invoice for:</p> <p>(i) the Total Fees, on or around the Start Date of the Services;</p> <p>(ii) any Renewal Fee and Licence Fee, prior to the commencement of the Renewal Period.</p> <p>All invoices must be paid within 30 days of the date of the invoice.</p> |

| Liability                                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------|
| <p>TopScore does not validate or warrant the accuracy of any user generated content, and does not accept any liability for such content.</p> |

In particular, we do not determine, recommend or otherwise endorse the quality or accuracy of any potential employer or candidate, and any action taken as a result of using the OneWay platform is at your sole discretion.

To the maximum extent permitted by law, our total liability to you in relation to these terms and your use of the Services, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise will be limited to £100 and we will not be liable for any loss of revenue, profits, goodwill, data or business or any indirect or consequential losses so arising.

**Other Important Terms**

The Client agrees that, during the term of this Agreement:

- TopScore may use your logo on our website and
- we may produce promotional material (e.g., case study or press release) relating to your use of our services

Signed for and on behalf of TopScore Technologies Limited

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Signed for and on behalf of \_\_\_\_\_ Limited

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

## Terms and Conditions

### Agreed terms

#### 1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Administrator(s):** those employees of the Customer (or of the End-Customer if applicable) who will act as the main point of contact with TopScore and who will control the Customer's (or the End-Customer's, if applicable) access to the Services, granting and managing access for Authorised Users.

**Assessment Outputs:** the results and scores generated by an assessment conducted on the Software from an individual Candidate's use of the Software.

**Authorised Users:** those persons whom the Customer permits to use the Services and the Documentation (for example, employees, agents, independent contractors, employee assessors, Candidates and the End-Customer where applicable), as further described in clause 2.2(b).

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

**Candidates:** any third party candidates who are invited to use the Software by the Customer for the purposes of their recruitment process with the Customer.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.5 or clause 10.6.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

**Customer:** means the Customer referred to in the Order Form.

**Customer Data:** the data inputted by the Customer, an End-Customer (where applicable), any Administrator(s), Authorised Users or by TopScore on the Customer's behalf, for the purpose of using the Services or facilitating the Customer's (or an End-Customer's) use of the Services (and which may include personal data).

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Documentation:** the document made available to the Customer by TopScore which sets out a description of the Services and the user guide instructions and video tutorials for the Services.

**Domestic Law:** Domestic Law means the law of the United Kingdom or a part of the United Kingdom.

**Effective Date:** the date of this agreement.

**End-Customer:** means (where applicable) the third party organisation appointing the Customer to set up and manage its digital assessment centres on its behalf.

**Initial Licence Term:** the initial licence term of this agreement as set out in the Order Form.

**Licences:** the number of assessment days and/or candidates set out in the Order Form, purchased by the Customer pursuant to clause 8.1.

**Licence Fees:** the licence fees payable by the Customer to TopScore for the Licences, as set out in the Order Form.

**Licence Term:** has the meaning given in clause 13.1 (being the Initial Licence Term together with any subsequent Renewal Periods).

**Normal Business Hours:** 9.00 am to 5.00 pm local UK time, each Business Day.

**Order Form:** means (i) the order form to which these Terms and Conditions are attached; or (ii) any form of proposal, quotation or similar document issued by TopScore, as the case may be.

**Renewal Fee:** is the renewal fee set out in the Order Form.

**Renewal Period:** the period described in clause 13.1.

**Services:** the services provided by TopScore to the Customer under this agreement via a bespoke url address or any other website notified to the Customer by TopScore from time to time, as set out in the Order Form.

**Platform Fee:** the set up fees payable by the Customer to TopScore, as set out in the Order Form.

**Software:** the online software applications provided by TopScore as part of the Services.

**TopScore:** means TopScore Technologies Limited.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

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

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

1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.

1.9 A reference to writing or written includes faxes but not e-mail.

1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

## **2. Licences**

2.1 Subject to the Customer purchasing the Licences in accordance with clause 3.3 and clause 8.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, TopScore hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Administrator(s) and Authorised User(s) to use the Services and the Documentation during the Licence Term and for the number of Licences only, solely for the Customer's internal business operations.

- 2.2 In relation to the Administrator(s), the Customer undertakes that:
- (a) each Administrator shall keep a secure password for their use of the Services and Documentation and that each Administrator shall keep their password confidential;
  - (b) it shall provide to TopScore for each Administrator(s) the name, email address and work telephone contact number at the time of signing this agreement, or as soon as possible thereafter. The Customer acknowledges and agrees that the Administrator accounts will not be activated until these details are received by TopScore.
- 2.3 Neither the Customer nor any Authorised User or Administrator shall access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (b) facilitates illegal activity;
  - (c) depicts sexually explicit images;
  - (d) promotes unlawful violence;
  - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - (f) is otherwise illegal or causes damage or injury to any person or property.
- 2.4 TopScore reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of clause 2.3.
- 2.5 Neither the Customer nor any Administrator or Authorised User shall:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
    - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
    - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - (c) use the Services and/or Documentation to provide services to third parties; or
  - (d) subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Administrator(s) and Authorised Users, or
  - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
  - (f) introduce or permit the introduction of, any Virus or Vulnerability into TopScore's network and information systems.
- 2.6 The Customer, the Authorised Users and Administrators shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify TopScore.
- 2.7 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer, unless agreed in advance by TopScore and confirmed in writing.

**3. Additional Licences**

- 3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Licence Term, purchase additional Licences in excess of the number set out in the Order Form and TopScore shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.
- 3.2 If the Customer wishes to purchase additional Licences, the Customer shall notify TopScore in writing. TopScore shall evaluate such request for additional Licences and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where TopScore approves the request, TopScore shall activate the additional Licences following approval of the Customer's request.
- 3.3 If TopScore approves the Customer's request to purchase additional Licences, the Customer shall, within 30 days of the date of TopScore's invoice, pay to TopScore the relevant fees for such additional Licences and, if such additional Licences are purchased by the Customer part way through the Initial Licence Term or any Renewal Period (as applicable), such fees shall be charged at the applicable rate (in full) for the relevant Initial Licence Term or then current Renewal Period.

**4. Services**

- 4.1 TopScore shall, during the Licence Term, provide the Services for the number of Licences set out in the Order Form, and make available the Documentation to the Customer on and subject to the terms of this agreement and permit the Customer and its Administrator(s) and Authorised Users to use the TopScore platform to run or participate in assessment centres and/or interviews in accordance with this agreement.
- 4.2 Administrator user accounts will be created for the Customer upon execution of this agreement and the Customer will be provided with a link to its Administrator user accounts and will be required to choose a password. TopScore will also create an Administrator user account solely for support purposes only.
- 4.3 TopScore uses a third party hosting provider (Microsoft Azure) to host the Services and is limited to the hosting provider's service level agreement of 99.95% for service availability. For assessment days, TopScore will always provision redundant data centre resources in at least two geo-locations. Therefore, if there is an issue with one of Microsoft Azure's data centres that TopScore provisioned, then there is an automated failover to the redundant data centre in another location. There is no manual intervention required for this, users may experience intermittent issues for 2 – 5 minutes whilst the automatic failover is taking place. After the completion of the failover, users will be able use the Services as per normal. In the unexpected event that the Service is unavailable and therefore disrupts a planned assessment day, TopScore will either credit the Customer for that assessment day and/or for candidates assessed for that day to be used within the Licence Term. If such an event occurs in the final month of the Licence Term (or any Renewal Period) TopScore shall extend the relevant Licence Term (or Renewal Period) for an additional month at no cost to allow the Customer the opportunity to use its rights under this clause 4.3.
- 4.4 TopScore shall use reasonable endeavours to not schedule maintenance of any kind to any element of the Services during a day on which the Customer has scheduled an assessment day.
- 4.5 TopScore shall use commercially reasonable endeavours to make the Services available, except for:
- (a) planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
  - (b) unscheduled maintenance performed outside Normal Business Hours, provided that TopScore has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 4.6 TopScore will, as part of the Services provide the Customer with TopScore's standard customer support services during Normal Business Hours. All support requests should be sent to [support@topscoretech.com](mailto:support@topscoretech.com).

- 4.7 For any critical issues such as non-availability of the Services or functional issues with the core features, TopScore shall use all reasonable endeavours to respond immediately but at least within three hours of the raised critical issue and to take all reasonable measures to resolve or provide the Customer with a workaround to relieve such issue as soon as possible. For any other non-critical issues raised, a response will be made within two working days and TopScore shall take reasonable measures to resolve the issue as soon as possible.

## **5. Customer data and data protection**

- 5.1 The Customer (or the End-Customer, as the case may be) shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 5.2 TopScore shall follow its archiving procedures for Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against TopScore shall be for TopScore to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by TopScore in accordance with its archiving procedure. TopScore shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party not engaged to provide services on its behalf. For third parties sub-contracted by TopScore to perform services related to Customer Data maintenance and back-up it shall remain fully liable under clause 5.9.
- 5.3 TopScore shall, in providing the Services, comply with its policies relating to the privacy and security of the Customer Data as notified to the client from time to time, and as amended from time to time by TopScore in its sole discretion.
- 5.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 5.5 The parties acknowledge that:
- (a) TopScore will process personal data on the Customer's behalf when performing its obligations under this agreement, and the Customer is the controller and TopScore is the processor for the purposes of the Data Protection Legislation. For the avoidance of doubt, the Customer is the controller in connection with any personal data collected on the Customer's behalf using the Software. Should the determination in this clause change, the parties shall use all reasonable endeavours to make any changes that are necessary to this clause 5.
  - (b) the scope, nature and purpose of processing by TopScore, the duration of the processing, and the types of personal data and categories of data subject shall be as follows:
    - (i) the scope nature and purpose of processing shall be to deliver the Services;
    - (ii) the duration of processing shall be during the Licence Term;
    - (iii) the types of personal data to be processed shall be first name, surname, email address, assessor scores and notes on candidates, candidate personal documentation (e.g. CV) and a phone number (if provided). TopScore shall also collect users IP addresses;
    - (iv) the categories of data subjects shall be candidates applying for a position with the Customer or a member of the Customer's group, assessors employed or contracted by the Customer or a member of the Customer's Group, and Administrators employed or contracted by the Customer or a member of the Customer's Group;
  - (c) the personal data may be transferred or stored outside the UK or the country where the Customer and the Administrator(s) are located in order to carry out the Services and TopScore's other obligations under this agreement, and in such cases the requirements of the Data Protection Legislation shall be met.
- 5.6 Without prejudice to the generality of clause 5.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to TopScore for the duration and

purposes of this agreement so that TopScore may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf. The Customer hereby represents, warrants and undertakes that its privacy policy, and any amendments, will at all times comply with the Data Protection Legislation and set out details of processing carried out by TopScore. As between the parties, the Customer is solely responsible for ensuring that all required fair processing information is provided to the relevant data subjects whose personal data TopScore will process for the purpose of carrying out the Services. The Customer hereby indemnifies, and shall keep indemnified, TopScore from and against any and all costs, damages and expenses of any kind arising from any claim or demand brought by any person, data subject or supervisory authority as a result of any breach of alleged breach by the Customer of its obligations under this clause 5.6.

- 5.7 Without prejudice to the generality of clause 5.3, TopScore shall, in relation to any personal data processed in connection with the performance by TopScore of its obligations under this agreement:
- (a) process that personal data only on the documented written instructions of the Customer unless TopScore is required by Domestic Law to process that personal data. Where TopScore is relying on Domestic Law as the basis for processing personal data, TopScore shall promptly notify the Customer of this before performing the processing required by Domestic Law unless Domestic Law prohibits TopScore from so notifying the Customer;
  - (b) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - (c) not transfer any personal data outside of UK unless (except where clause 5.5(c) or clause 5.9 apply) the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (i) the Customer or TopScore has provided appropriate safeguards in relation to the transfer;
    - (ii) the data subject has enforceable rights and effective legal remedies;
    - (iii) TopScore complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
    - (iv) TopScore complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
  - (d) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (e) notify the Customer without undue delay on becoming aware of a personal data breach;
  - (f) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of this agreement unless required by Domestic Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and
  - (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and immediately inform the Customer if, in the opinion of TopScore, an instruction infringes the Data Protection Legislation.
- 5.8 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 5.9 The Customer consents to TopScore appointing Microsoft Azure (cloud provider) as a third-party processor of personal data under this agreement. TopScore confirms that it has entered or (as the case may be) will enter

with the third-party processor into a written agreement incorporating terms which are substantially on that third party's standard terms of business and in either case which TopScore confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and TopScore, TopScore shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 5. TopScore shall not give access to or transfer any personal data to any additional third party without the prior written consent of the Customer, such consent not to unreasonably withheld.

- 5.10 Either party may, at any time on not less than 30 days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## **6. Supplier's obligations**

- 6.1 TopScore undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to TopScore's instructions, or modification or alteration of the Services by any party other than TopScore or TopScore's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, TopScore will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.
- 6.3 TopScore:
- (a) does not warrant that:
    - (i) the Customer's use of the Services will be uninterrupted or error-free; or
    - (ii) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
    - (iii) the Software or the Services will be free from Vulnerabilities or Viruses;
  - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.4 This agreement shall not prevent TopScore from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 6.5 TopScore warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

## **7. Customer's obligations**

- 7.1 The Customer shall:
- (a) provide TopScore with:
    - (i) all necessary co-operation in relation to this agreement; and
    - (ii) all necessary access to such information as may be required by TopScore to deliver the Services;
- in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

- (b) ensure that the maximum number of Candidates does not exceed the amount permitted under the relevant Licences set out in the Order Form or as agreed between the parties from time to time;
- (c) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (d) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, TopScore may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (e) ensure that the Administrator(s) and the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Administrator or Authorised User's breach of this agreement;
- (f) ensure that its network and systems comply with the relevant specifications provided by TopScore from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to TopScore's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## **8. Charges and payment**

- 8.1 The Customer shall pay the Licence Fees and the Set up Fee to TopScore for the Licences in accordance with this clause 8 and the Order Form.
- 8.2 The Customer shall on the Effective Date provide to TopScore approved purchase order information acceptable to TopScore and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides its approved purchase order information to TopScore, TopScore shall invoice the Customer on or around the Effective Date for the Licence Fees and any Set up Fee payable in respect of the Initial Licence Term and the Customer shall pay each invoice in accordance with the payment terms set out in the Order Form.
- 8.3 In the event this agreement is renewed for a Renewal Period in accordance with clause 13.1, the Customer shall pay the Renewal Fee to TopScore, in accordance with the payment terms set out in the Order Form.
- 8.4 If TopScore has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of TopScore:
  - (a) TopScore may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and TopScore shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.5 All amounts and fees stated or referred to in this agreement:
  - (a) shall be payable in pounds sterling;
  - (b) are non-cancellable and non-refundable;
  - (c) are exclusive of value added tax, which shall be added to TopScore's invoice(s) at the appropriate rate.
- 8.6 TopScore shall be entitled to increase the Licence Fees, the fees payable in respect of the additional Licences purchased pursuant to clause 3.3, at the start of each Renewal Period upon 90 days' prior notice to the Customer and the Order Form shall be deemed to have been amended accordingly.

**9. Proprietary rights**

- 9.1 The Customer acknowledges and agrees that TopScore and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 9.2 Upon completion of each assessment carried out pursuant to this agreement, the resulting Assessment Outputs only shall be owned by the Customer.
- 9.3 TopScore confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

**10. Confidentiality**

- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2 Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5 TopScore acknowledges that the Customer Data is the Confidential Information of the Customer.
- 10.6 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.7 The above provisions of this clause 10 shall survive termination of this agreement, however arising.

**11. Indemnity**

- 11.1 The Customer shall defend, indemnify and hold harmless TopScore against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) TopScore provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

11.2 TopScore shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with this agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) TopScore is given prompt notice of any such claim;
- (b) the Customer provides reasonable co-operation to TopScore in the defence and settlement of such claim, at TopScore's expense; and
- (c) is given sole authority to defend or settle the claim.

11.3 In the defence or settlement of any claim, TopScore may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

11.4 In no event shall TopScore, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by anyone other than TopScore; or
- (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by TopScore; or
- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from TopScore or any appropriate authority.

11.5 The foregoing and clause 12.3(b) states the Customer's sole and exclusive rights and remedies, and TopScore's (including TopScore's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **12. Limitation of liability**

12.1 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. TopScore shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to TopScore by the Customer in connection with the Services, or any actions taken by TopScore at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

12.2 Nothing in this agreement excludes the liability of TopScore:

- (a) for death or personal injury caused by TopScore's negligence; or
- (b) for fraud or fraudulent misrepresentation.

12.3 Subject to clause 12.1 and clause 12.2:

- (a) TopScore shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) TopScore's total aggregate liability in contract (including in respect of the indemnity at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Licence Fees (or the total Renewal Fee if applicable) paid for the Licences during the 12 months immediately preceding the date on which the claim arose.

12.4 Nothing in this agreement excludes the liability of the Customer for any breach, infringement or misappropriation of TopScore's intellectual property rights.

### 13. Term and termination

- 13.1 This agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Licence Term and, thereafter, shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Licence Term or any Renewal Period, in which case this agreement shall terminate upon expiry of the applicable Initial Licence Term or Renewal Period; or (b) otherwise terminated in accordance with the provisions of this agreement; and the Initial Licence Term together with any subsequent Renewal Periods shall constitute the **Licence Term**.
- 13.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default after being notified in writing to make such payment;
  - (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach after being notified in writing to do so;
  - (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
  - (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
  - (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (f) the other party applies to court for, or obtains a moratorium under Part A1 of the Insolvency Act 1986;
  - (g) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (h) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
  - (i) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

- (j) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (k) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(d) to clause 13.2(k) (inclusive); or
- (m) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.3 If the agreement is terminated by either Party under this clause 13, then (save where termination is due to a breach by TopScore) without prejudice to any other rights that the Customer may have, TopScore shall be entitled to keep the entire fee paid by the Customer.

13.4 In addition either Party may terminate this agreement by giving the other party at least 60 days' notice at any time for any reason. A refund cannot be provided should the Customer terminate early.

13.5 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) TopScore may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with clause 5 unless TopScore receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. TopScore shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by TopScore in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

#### **14. Force majeure**

TopScore shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of TopScore or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, epidemic, pandemic or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

#### **15. Conflict**

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

**16. Variation**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**17. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**18. Rights and remedies**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**19. Severance**

19.1 If any provision or part-provision of this 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.

19.2 If any provision or part-provision of this agreement is deemed deleted under clause 19.1 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.

**20. Entire agreement**

20.1 This 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.

20.2 Each party acknowledges that in entering into this 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 this agreement.

20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**21. Assignment**

21.1 The Customer shall not, without the prior written consent of TopScore, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

21.2 TopScore may, with the Customers agreement which shall not be unreasonably withheld or delayed, at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

**22. No partnership or agency**

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **23. Third party rights**

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **24. Notices**

24.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

24.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

## **25. Governing law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## **26. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).