



**Applicant Tracking System Contract**

**Presented to: Will Shepherd, Cohesion**

**Presented by: Victoria Creamer**

**Proposal Ref: SO-2300260**



# Recrutive Limited and Cohesion Recruitment Limited Master Services Agreement

This is an agreement between Recrutive Limited, Unit 15, Morston Court, Kingswood Lakeside, Cannock, Staffordshire, WS11 8JB and Cohesion Recruitment Limited, 2nd Floor, Stratford Court, Cranmore Boulevard, Solihull, B90 4QT.

## 1. DEFINITIONS AND INTERPRETATION

**Agreement:** means the agreement entered by the Service Provider and the Client incorporating these Terms and Conditions (or variation thereof agreed upon by both Parties) which shall govern provision of the Services.

**Acceptance:** means acceptance by the Client by means of written notification to Recrutive Limited following completion of the Acceptance Tests.

**Acceptance Criteria:** means the criteria set out in the initial SOW and the requirements of the relevant Technical Specification (in relation to the Software) or Services Specification (in relation to Services), together with any additional functional or technical criteria which the Services need to fulfil before they will be accepted by the Client.

**Acceptance Tests:** any and all acceptance tests, reviews and/or approvals to be carried out on the Software and/or Services which are designed to test compliance of the Software or Services in the one month period following the Go-Live Date.

**Affiliate** means any entity that directly or indirectly Controls, is controlled by, or is under common Control with another entity.

**Back-up Policy:** Recrutive Limited standard Client back-up policy as referred to and linked from the Sales Order Form.

**Business Day:** any day which is not a Saturday, Sunday, or public holiday in the UK.

**Candidate:** means any person registering their details with the Client as a job seeker.

**Commencement Date:** the date of signature of the Sales Order Form and the date on which the Set-Up Fee is payable to Recrutive Limited and this Agreement takes effect and comes into force.

**Confidential Information:** all information whether conveyed orally, in writing, in machine readable form or otherwise which relates to a party's and/or any of its Affiliate's business, equipment, services, developments, trade secrets, know-how, personnel, suppliers and Clients (whether or not designated as "confidential information" by the disclosing party) together with all information derived from the above, the existence and terms of this Agreement and all information designated as confidential or which ought reasonably to be considered confidential;

**Client:** means the party procuring the Services from the Service Provider who shall be identified and detailed in the Sales Order Form and Agreement (including its Authorised Users).

**Client Data:** the data, information, text, drawings or other material (in whatever form and on any medium including all electronic, optical, magnetic and tangible media) relating to the Client's Group which is, (i) supplied or made available to Recrutive Limited or its sub-contractors by or on behalf of the Client's Group, (ii) obtained by Recrutive Limited or its sub-contractors for the purposes on enabling the Services, the Software or the fulfilment of Recrutive Limited obligations under this Agreement, (iii) created, generated, transmitted, stored or processed by Recrutive Limited or its sub-contractors as part of providing the Service and/or Software, or (iv).

Inputted by the Client, Authorised Users, or Recrutive Limited on the Client's behalf for the purpose of using the Services or facilitating the Client's use of the Services.

**Client Environment:** means the Client's IT infrastructure, networks, and systems.

**Client Materials:** all documents, information, items, and materials in any form (whether owned by the Client or a third party), which are provided by the Client to Recrutive Limited in connection with the Services.

**Defects:** means in relation to any or all the Software:

- a) any error or failure of code within the Software;
- b) any failure of the Software to comply with the Acceptance Criteria and/or its specification, including the Services Specification; or
- c) any failure of the Software to comply with any applicable service levels as stated on the Recrutive Limited website and means in relation to any or all Services (excluding Software):

- d) any failure to comply with the Services Specification or any Acceptance Criteria;
- e) any failure of the Services to comply with the terms of this Agreement; and
- f) any failure of the Services to comply with the applicable service levels stated on the Recruitiv Limited website

**First Build Stage:** The First Build stage occurs when we upload the website database and/or the Exigo Lite system to our servers, ready for use or final development. At this stage, your system becomes part of our network and the full annual contract commences with all license fees payable and invoiced from that date.

**Go Live Date:** means the date that is the later of a) the date detailed in the latest agreed Proposal as the Go-Live Date; or, b) date notified by the Client to Recruitiv Limited on which the Client has Accepted the Software; but in both scenarios shall be a date following at least one month subsequent to receipt by the Client of the Software for Acceptance Tests.

**Implementation Plan:** the plan, time schedule and sequence of events for the customisation, configuration, set-up, migration and integration of the Services (including any training detailed in the Service Order Form) and any Acceptance Tests to enable the Client to go-live with the Services and incorporating the Scoping Document.

**Intellectual Property Rights:** means (a) any and all rights in any patents, trademarks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trademarks and service marks, copyrights, database rights, know-how, rights in designs and inventions;

(b) rights under licenses, consents, orders, statutes or otherwise in relation to a right in paragraph (a);

(c) rights of the same or similar effect or nature as or to these in paragraphs (a) and (b) which now or in the future may subsist; and

(d) the right to sue for past infringements of any of the foregoing rights;

**Initial Term:** the initial term of this Agreement as set out in the Sales Order Form commencing on the Go-Live Date.

**License:** The license purchased by the Client as detailed in the Sales Order Form which entitles Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.

**License Fees:** the license fees payable by the Client for the use of the Services as detailed in the Sales Order Form.

**Monthly Fees:** the monthly fees payable to Recruitiv Limited as detailed in the Sales Order Form.

**Normal Business Hours:** 9.00 am to 5.30 pm local UK time, each Business Day.

**Payment Terms:** thirty days from receipt of invoice unless otherwise agreed in a Sales Order Form.

**Project Documents:** the latest dated document issued by Recruitiv Limited in respect to any aspect of the Services being provided (including but not limited to the Implementation Plan and Scoping Document).

**Project Start Date:** the estimated date provided to the Client on which Recruitiv Limited will begin providing Services in accordance with the Implementation Plan following the payment of the Set-up fees.

**Renewal Term:** The Initial Term and any subsequent terms described in clauses 2.7 and 15.1.

**Sales Order Form (SOF):** The sales order form that details the Services and the related Fees, signed by the Client, incorporating this Agreement and a Service Level Agreement or any other Agreement between the parties in writing that details Services to be provided, the Project Start Date and any related Fees.

**Services:** The services provided by Recruitiv Limited (including the implementation services detailed in the Implementation Plan and/or any Additional Services) to the Client under this Agreement, as more particularly described (as appropriate) in the Documentation, any Sales Order Form and the Scoping Document.

**Service Level Agreement:** Recruitiv Limited policy for providing support services in relation to the Services as amended by Recruitiv Limited from time to time.

**Services Specification** means the specification for the Services set out in the relevant SOW, together with any function or technical specification applicable or to be agreed between the parties in a SOW.

**Scoping Document:** means the document formalising the scope of Services provided by Recruitiv Limited as agreed between the Parties.

**Set-Up Fees:** the fees payable plus VAT by the Client as detailed in the Sales Order Form that is required to commence the project.

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

**Statement Of Works:** A jointly signed-off document, generated and presented following the "placement of an order" and the completion of business requirements gathering meeting(s), which captures and describes the detailed business process requirements for the project.

**Technical Specification:** means the relevant technical specification applicable to the Software (together with any functional or technical specification applicable to or agreed between the parties in respect of any upgrade to the Software) and such additional or any alternative technical specification as may be agreed between the parties in the relevant SOW.

**Term:** The term begins on the date that the Client first makes use of the Software in the normal course of its business or the Go-Live Date, whichever is the earlier and continues for an initial period of one year and each such successive one year period unless terminated by either party in accordance with this Agreement.

**Variation Fee:** the fee payable, through a sales Order Form, for additional works or services outside of that detailed within the original Sales Order Form and Statement of Works, as requested by the Client and accepted by Recruitivite either during or after completion of the Implementation Plan.

Clause, schedule, and paragraph headings shall not affect the interpretation of this Agreement. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it. Any words following the terms including, include, in particular, for example or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms.

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. The Schedules, Service Order form and any Service Level Agreement form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules. In the event of a conflict between the terms and conditions of this Master Services Agreement (“MSA”), Service Level Agreement (“SLA”) or Statement of Works (“SOW”), the following order of preference shall prevail: 1) SOW, 2) MSA, 3) SLA.

## 2. SERVICES

2.1 This Agreement together with any Sales Order Form(s), Service Level Agreement, Scoping Document, Implementation Plan and any other Project Document will operate as a framework Agreement which defines the contractual terms and conditions under which Recruitivite Limited will supply Services to the Client.

2.2 In the event that: (a) the Set-up fee is not paid within 90 days of the Commencement Date; or, (b) there is a delay to the Go-Live Date caused solely and exclusively by the Client which lasts more than 30 days, then Recruitivite Limited may, revise any of the Project Documents, any Monthly Fee, on prior written Agreement with the Client (not to be unreasonably withheld), to reflect any changes in its pricing model, or commercial offer to the Client.

2.3 Whilst this Agreement remains in force the parties shall agree the provision of Services as set out in a SOW which shall be governed by and be subject to, the terms and conditions of this Agreement.

2.4 During the Term, Recruitivite Limited shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, in accordance with the Service Level Agreement. Any dates quoted for delivery of Services are approximate only. Any work which is not detailed in a SOW or Scoping Document is out of scope and subject to additional charges on prior written Agreement with the Client. During the Term, Recruitivite Limited will, as part of the Services provide the Client with Recruitivite Limited standard Client support services during Normal Business Hours in accordance with Recruitivite Limited Service Level Agreement in effect at the time that the Services are provided.

2.5 The Client acknowledges that Recruitivite Limited may make minor changes to the Services to improve service provision from time to time during the term of this Agreement, provided that where any such changes substantially adversely affect the Client’s use of the Services, Recruitivite Limited will give the Client reasonable notice of such change prior to it being implemented. For the purposes of this clause, a “minor change” is a change to the Services received by the Client, which, if it had been reported by the Client, would not exceed a Priority 5a issue, as defined in the Service Level Agreement.

2.6 Where specified in a SOW, Recruitivite Limited shall use reasonable efforts to ensure the accurate migration of any data. Recruitivite Limited warrants that subsequent to the migration the data is true, accurate and complete and in the same or substantially the same form as prior to the migration. The Client and Recruitivite Limited shall be responsible for checking the accuracy and completeness of the migrated data and shall promptly give sufficient details to Recruitivite Limited of any inaccuracies or omissions in order to permit Recruitivite Limited to correct them.

2.7 Recrutive Limited warrants, represents and undertakes to the Client that on the Commencement Date and for the duration of the Term, it has (and will continue to have and hold):

2.7.1. all necessary licences, permits, consents and regulatory approvals necessary to perform its obligations under this Agreement.

2.7.2. full access and right to all technical information, expertise and data which is or might reasonably be required for the purposes of the Services.

2.7.3. all components and Software shall be properly maintained and free and clear of any claims, charges, liens, and encumbrances; and

2.7.4. the Software will comply with the Technical Specification, the Services Specification and the relevant Acceptance Criteria and shall be free from all Defects or faults.

2.8 Recrutive Limited warrants, represents and undertakes to the Client that for the duration of the Term the Services shall be performed in accordance with good industry practice and in a timely and workman-like manner with reasonable care and skill (the **"Performance Warranty"**) Within three (3) days of becoming aware of any warranty non-compliance, Recrutive Limited shall without affecting the Client's rights or remedies under any other provision of a relevant SOF, at its own cost, re-perform the Services so that they comply with the Performance Warranty promptly on becoming aware of any non-conformity with the Performance Warranty or upon receive notice to that effect from the Client.

### 3. PROJECT START DATE AND IMPLEMENTATION PLAN

3.1 N.B. The process detailed below in clauses 3.1 to 3.6 will apply to all work we complete for you during the course of this Agreement where we agree an Implementation Plan for the delivery of Services. In all cases clauses 3.6 to 3.14 shall apply.

3.2 Following the signature of this Agreement, on payment of the Set-up fees, Recrutive Limited shall confirm the proposed Project Start Date and the parties will meet either in person or via conference call to discuss formalising the scope of Services to be provided by Recrutive Limited to the Client in a Scoping Document and the Implementation Plan (the "Implementation Meeting").

3.3 Within 7 Business Days of the Implementation Meeting, Recrutive Limited shall provide the Client with a proposed First Build Stage Date, Go-Live Date, Scoping Document, and Implementation Plan for approval. The Client shall as soon as reasonably practicably review such documents and may reject them (having provided Recrutive Limited in writing its reasons for any rejection) no later than 14 Business Days after it is first delivered to the Client. If the Client does not reject the proposed First Build Stage Date, Go-Live Date, Scoping Document or Implementation Plan they shall be deemed approved working documents. For the avoidance of doubt, the Client shall have the right to reject the Implementation Plan and Scoping Document for any reason whatsoever and notwithstanding anything stated herein the Client shall have the right to terminate this Agreement and/or any SOF in existence with this fourteen (14) day period.

3.4 If the Client does reject either the proposed First Build Stage Date, Go-Live Date, Scoping Document or Implementation Plan (and does not exercise its termination right pursuant to Clause 3.3), then Recrutive Limited shall then revise the document (taking reasonable account of the Client's comments) and re-submit the document to the Client for approval within 5 Business Days of the Client's notice of rejection. The process in this clause shall continue to apply to any subsequent rejections, provided that either party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3.5 For the avoidance of doubt, the Client has the right to reject the Services and/or Software and terminate this Agreement and any SOF during the Acceptance Tests.

3.6 As part of the Services, Recrutive Limited will work with the Client to assist in the implementation of the Services in accordance with the Implementation Plan. The completion of the implementation will be at the sole discretion of the Client.

3.7 Work will not begin on the Implementation Plan until the relevant Set-up fee has been paid.

3.8 Recrutive Limited shall complete the work in each stage of the Implementation Plan by the date specified in the Implementation Plan, subject to clause 3.10.

3.9 Recrutive Limited shall be given an extension of the timetable of any one or more of the stages in the

Implementation Plan or for any other Services if one of more of the following events occurs:

- 3.9.1. a variation to Services is made at the Client's request or a request for something out of scope.
- 3.9.2. a force majeure event occurs as described in this Agreement.
- 3.9.3. a delay is caused in whole or in part by an action or omission of the Client or its employees, agents or any third-party.

3.10 If Recrutive Limited is entitled to an extension of time under clause 3.13, it shall give written notice to the Client not later than thirty days after having become aware of the event. Such notice shall specify the event relied on and, in the case of a force majeure event, shall estimate the probable extent of the delay.

3.11 The parties shall use best endeavours to agree in writing, signed by both parties, what extension of time is reasonable in the circumstances. The SOW or other applicable timetable shall be deemed amended accordingly.

3.12 If either party requests a change to the scope or execution of the Services, Recrutive Limited shall, within a reasonable time, provide a written estimate to the Client of: (a) the likely time required to implement the change; (b) any variations to Recrutive Limited fees arising from the change; (c) the likely effect of the change on any Project Documents; and (d) any other impact of the change on the terms of this Agreement.

3.13 If Recrutive Limited requests a change to the scope of the Services, the Client shall not unreasonably withhold or delay consent to it. If the Client wishes Recrutive Limited to proceed with the change, Recrutive Limited has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its fees, the Project Documents and any other relevant terms of this Agreement to take account of the change.

#### **4. INTEGRATION WITH THIRD PARTY SERVICES**

4.1 We collaborate with third parties such as Google and LinkedIn to offer services and functionality using third party developer tools such as application programming interfaces ("APIs") (our "Integration Services"). These third-party API terms and conditions contain restrictions on access, storage and use of information. Where you make use of these third party APIs through our Integration Services, you will be asked to confirm that you have obtained the permission of the relevant data subject prior to processing their data in this way and your compliance with the relevant third party's web site's terms and conditions in relation to your use of each individual data subject's data. We have no control over the content of third party sites or resources which we link to through our use of APIs and accept no liability or responsibility for them, your use or inability to use Integration Services, the web sites they link to or their contents, their accuracy or reliability or for any loss or damage (direct, indirect, special, consequential or otherwise) whatsoever that may arise from your use of any of them or the results obtained. Your use of our Integration Services is on an "as is" basis and without any warranty of any kind. Any Integration Services shall be included in the Monthly Fee and such Integration Services shall be carried out with reasonable skill and care in accordance with good industry practice.

#### **5. PERMITTED AND ACCEPTABLE USE POLICY**

5.1 The Client shall not 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 violence; (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or (f) causes damage or injury to any person or property; and Recrutive Limited reserves the right, without liability to the Client, to disable the Client's access to Services as a result of a breach of the provisions of this clause.

5.2 The Client shall not:

5.2.1. Except as may be allowed by any applicable law which is incapable of exclusion by Agreement between the parties:

5.2.1.1. and except to the extent expressly permitted under this Agreement, 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

5.2.1.2. attempt to reverse compile, disassemble, reverse engineer, or otherwise reduce to human-perceivable form all or any part of the Software; or

5.2.2. access all or any part of the Services and Documentation to build a product or service which competes with the Services and/or the Documentation; or

- 5.2.3. use the Services and/or Documentation to provide services to third parties; or
- 5.2.4. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to anyone except the Authorised Users, or
- 5.2.5. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 5.

5.3 The Client 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 Recruitivite Limited. To the extent permissible by law, Recruitivite Limited will not be liable for any loss that the Client, an Authorised User or any third party may incur as a result of any use or misuse of any username or password or any part of the Services, whether with or without the Client's knowledge.

5.4 The rights provided under this clause 4 are granted to the Client only and shall not be considered granted to any subsidiary or holding company of the Client unless otherwise agreed in writing in a SOF.

## 6. ADDITIONAL SERVICES AND VARIATIONS

Subject to the payment of the appropriate fees and the terms of this Agreement, Recruitivite Limited shall provide Additional Services or Variations to the original SOF, as agreed between the parties from time to time in a separate SOF. Unless otherwise detailed in a SOF, Recruitivite Limited will send the Client an invoice for any Additional Services or Variations prior to the commencement of the work.

## 7. CLIENT DATA AND DATA PROTECTION

7.1 The Client shall own all rights, title and interest in and to all of the Client Data and, subject to any other provision of this Agreement, shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data.

7.2 Recruitivite are firmly committed to respecting privacy and comply with applicable data protection and privacy laws, including Data protection Act 2018 and General Data Protection Regulation (GDPR) ("**Data Protection Legislation**"). Any personal information we collect is with the data subject's permission and is used for purposes specifies at the point of collection, primarily either for fulfilling a contract or marketing purposes. In line with article 21 of GDPR, Recruitivite respect an individual's right to object to their personal data being processed, unless there are legitimate grounds to do so. Recruitivite Limited facilitates the Client's requirement to comply with data protection legislation by ensuring that consent is given by a candidate to store personal data and that data is securely removed. Recruitivite's privacy policy can be found at <https://www.recruitivite.com/privacy-policy> Recruitivite will use Services agreed to encrypt all Personal Data it collects and shall not be disseminated in whole or in part without the Client's prior written consent.

7.3 Recruitivite Limited carries out backups of Client Data as detailed in the Recruitivite Limited Back up Policy. In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy shall be for Recruitivite Limited to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest available back-up of such Client Data maintained by Recruitivite Limited in accordance with the archiving procedure described in its Back-Up Policy. In all events, the Client releases Recruitivite Limited from liability for loss of data to the extent that the data has changed since the last available back up and the time that Recruitivite Limited were last required by the Recruitivite Limited Back Up Policy to perform a backup. On request by the Client, Recruitivite Limited agrees to erase and remove all Personal Data related to an individual from its software and/or confirm that such Personal Data cannot be accessed or restored in whole or in part.

7.4 The parties acknowledge and agree that for the purpose of Data Protection Legislation, the Client is the controller and Recruitivite Limited is the processor.

7.5 Recrutive Limited shall (i) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, 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), (ii) ensure that all personnel who have access to and/or process personal data are obliged to keep the data confidential, (iii) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled: (a) Recrutive Limited has provided appropriate safeguards in relation to the transfer; (b) the data subject has enforceable rights and effective legal remedies; (c) Recrutive Limited complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and (d) complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred

7.6 The Clients Data and Clients Materials stored by Recrutive is encrypted (including any transfers of the Client Data or Client Materials to appropriate persons) and only accessible to authorised personnel. All accounts are secured with a strong password with the ability to add two factor authentications as required.

7.7 Recrutive Limited shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Client Data as amended from time to time by Recrutive Limited in its sole discretion.

7.8 Recrutive shall (i) complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data, (ii) assist the Client, 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, (iii) notify the Client without undue delay on becoming aware of a personal data breach, (iv) at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the Agreement (or otherwise on request) unless required by applicable law to store the personal data and (v) indemnify the Client against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Client arising out of, or in connection with compliance with this Clause 6.

7.9 Agreement Recrutive Limited processes any personal data on the Client's behalf when performing its obligations under this Agreement, the parties record their intention that the Client shall be the data controller and Recrutive Limited shall be a data processor and in any such case:

7.9.1. entitled to transfer the relevant per. sonal data to Recrutive Limited so that Recrutive Limited may lawfully use, process, and transfer the personal data in accordance with this Agreement on the Client's behalf.

7.9.2. the Client shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation.

6.9.3. Recrutive Limited shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Client from time to time.

6.9.4. Recrutive Limited shall procure that each of the Approved Suppliers shall, always comply with the Data Protection Legislation; and

6.9.5. each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction, or damage.

7.10 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).



## **8. MAINTENANCE AND COMPLIANCE WITH LAWS**

8.1 Subject to any force majeure as specified in clause 13, Recrutive Limited will endeavour to maintain the services on a twenty-four-hour seven day per week basis. This will be subject to any essential maintenance of the service provider's systems. Should these services not be available, to the Client, for a minimum period of twenty-four hours in any one period, then, without prejudice the service provider will extend any active Agreement by the same period, without any financial compensation. Should this period extend beyond fourteen working days then at the discretion of the service provider a pro rata rebate may be issued.

8.2 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.

8.3 The Service Provider may, in relation to certain specified matters related to the Services, act on the Client's behalf. Such matters shall not be set out in the Agreement but shall be agreed between the Parties as they arise from time to time.

## **9. INTELLECTUAL PROPERTY RIGHTS**

9.1 The Client and its licensors shall retain ownership of all Intellectual Property Rights in the Client Data and/or any Client Materials.

9.2 Throughout the Term of the Agreement, the Service Provider shall be deemed to automatically grant a royalty-free, non-exclusive licence of any and all such rights to the Client to use the same in accordance with the terms of the Agreement and the Services.

9.3 Recrutive Limited shall undertake to execute any such Agreements and perform any such actions that may be necessary to put such licences into effect.

9.4 The Client may sub-licence the rights granted to it pursuant to Clause 8.2 to its Affiliates or any purchaser of all or substantially all its business.

9.5 Recrutive Limited warrants that the receipt, use and onward supply of the Services and the Software (excluding Client Materials or Client Data) shall not infringe the rights, including the Intellectual Property Rights of any third party and shall indemnify the Client against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Client arising out of, or in connection with, the receipt, use or supply of the Services and the Software (excluding the Client Materials).

9.6 In complying with the provisions of sub-Clause

9.7 The Service Provider shall assert all moral rights arising out of Chapter IV of the Copyright, Designs and Patents Act 1988.

## **10. CLIENTS OBLIGATIONS**

10.1 The Client shall use all reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the Services.

10.2 The Client may, from time to time, issue reasonable instructions to the Service Provider in relation to the Service Provider's provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.

10.3 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.

10.4 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of Clause 8 of the Agreement shall not be the responsibility or fault of the Service Provider.

## **11. CLIENT FEES, PAYMENTS AND RECORDS**

11.1 The Client shall pay the fees to the Service Provider in accordance with the provisions of the Agreement.

11.2 The Service Provider shall invoice the Client for fees due in accordance with the provisions of the Agreement.

11.3 All payments required to be made pursuant to the Agreement by either Party shall be made within 30 working Business Days of receipt by that Party of the relevant invoice.

11.4 All payments required to be made pursuant to the Agreement by either Party shall be made in Pounds Sterling in cleared funds to such bank in England as the receiving Party may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law.

11.5 Where any payment pursuant to the Agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.

11.6 Without prejudice to sub-Clause 9.1 of the Agreement, any sums which remain unpaid following the expiry of the period set out in sub-Clause 8.3 of the Agreement shall incur interest on a daily basis at 4% above the base rate of The Bank of England from time to time until payment is made in full of any such outstanding sums.

## **12. LIABILITY, INDEMNITY AND INSURANCE**

12.1 Recruitiv e Limited shall ensure that it always has in place suitable and valid insurance that shall include public liability insurance.

12.2 The Client's total liability to Recruitiv e Limited whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to the greater of £15,000 or the total annual charges (calculated by reference to the charges in successive 12-month periods from the date of this Agreement) paid and payable by the Client under this Agreement.

12.3 Recruitiv e Limited total liability to the Client whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to the greater of £250,000 or the total annual charges (calculated by reference to the charges in successive 12-month periods from the date of this Agreement) paid and payable by the Client under this Agreement. For the avoidance of doubt this liability cap shall not apply to indemnities provided by Recruitiv e Limited under Clauses 6.8 and 8.5.

12.4 Nothing in this Agreement:

12.4.1. shall limit or exclude the Client or Recruitiv e Limited liability for:

12.4.1.1. death or personal injury caused by its negligence, or the negligence of its personnel, agents, or subcontractors.

12.4.1.2. fraud or fraudulent misrepresentation.

12.4.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) any other liability which cannot be limited or excluded by applicable law; and shall limit or exclude Recruitiv e Limited liability under Clause 6.8 or Clause 8.5.

## **13. CONFIDENTIALITY**

13.1 Each Party shall undertake that, except as provided by sub-Clause 12.2 or as authorised in writing by the other Party, it shall, always. Agreement

13.1.1. keep confidential all Confidential Information.

13.1.2. not disclose any Confidential Information to any other party.

13.1.3. not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement.

13.1.4. not make any copies of record in any way or part with possession of any Confidential Information; and

13.1.5. ensure that none of its directors, officers, employees, agents, sub-contractors, or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 13.1.1 to 13.1.4 of the Agreement.

13.2 Either Party may:

13.2.1. disclose any Confidential Information to:

13.2.1.1. any sub-contractor or supplier of that Party.

13.2.1.2. any governmental or other authority or regulatory body; or

13.2.1.3. any employee or officer of that Party or of any of the aforementioned persons, parties or bodies; to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 12.2.1.4 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of Clause 12 of the Agreement, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

12.2.1.4. Use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.

13.3 The provisions of Clause 12 of the Agreement shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

#### **14. FORCE MAJEURE**

14.1 No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

#### **15. WEBSITE AND SOFTWARE USAGE**

15.1 Due to the internet not being an inherently stable medium as a whole, errors, omissions and interruption of service with delays may occur at any time; the Service Provider does not accept any liabilities arising from these occurrences as they are beyond their control.

15.2 The Client must only use the Service Provider's website for lawful purposes. Under no circumstances must the Client seek to undermine the security of a website or any information contained therein either by but not limited to access, alter, or delete any information to which authorisation has not been granted. Seek to overload the system via "spamming", "flooding" or to take any action or use any device, routine, or software to crash, delay, damage or otherwise interfere with the Service Provider's website.

#### **16. TERMS AND TERMINATION**

16.1 The Agreement shall come into force on the agreed Commencement Date and shall continue for a defined Term from that date, subject to the provisions of this Clause 15 of the Agreement.

16.2 The Client shall have the right to terminate this Agreement (and any SOF there under) without cause on 30 days prior written notice to Recrutive Limited

16.3 On termination by the Client for any reason, Recrutive Limited will provide all assistance reasonably required by the Client to facilitate the smooth transition of the Services to the Client or any replacement supplier appointed by it

16.4 Either Party shall have the right, subject to the Agreement and consent of the other Party and exercisable by giving not less than 30 days written notice to the other at any time prior to the expiry of the Term specified in sub-Clause 14.1 of the Agreement (or any further period for which the Agreement is extended) to extend the Agreement for a further period of twelve months.

16.5 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:

16.5.1. Any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 7 days Business Days of the due date for payment.

16.5.2. The other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 30 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;

16.5.3. An encumbrance takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party.

16.5.4. The other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

16.5.5. The other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);

16.5.6. Anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party.

16.5.7. The other Party ceases, or threatens to cease, to carry on business; or

16.6 Agreement For the purposes of sub-Clause 14.3.4, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

16.7 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

16.8 The Client 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 under this Agreement, provided that it gives prior written notice of such dealing to Recrutive.

16.9 Any change of control in the Client whether by acquisition or otherwise shall not operate to terminate this Agreement in whole or in part unless in accordance with this Agreement.

## **17. EFFECTS OF TERMINATION**

Upon the termination of the Agreement for any reason:

17.1 Agreement Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect.

17.2 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;

17.3 subject as provided in Clause 15 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other.

17.4 each Party shall (except to the extent referred to in Clause 11 of the Agreement) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information; and

## **18. NO WAIVER**

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

## **19. FURTHER ASSURANCE**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

## **20. COSTS**

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

## **21. SET-OFF & CONSEQUENTIAL LOSSES**

20.1 The Client shall not be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other Agreement at any time.

20.2 The Company shall not be liable for consequential losses incurred by the Client claimed to be due in part or whole by operation of the system.

## **22. RELATIONSHIP OF THE PARTIES**

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

## **23. THIRD PARTY RIGHTS**

22.1 Except with respect to the Client's Affiliates, no part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

22.2 Subject to Clause 24 of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

## **24. NOTICES**

24.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

24.2 Notices shall be deemed to have been duly given:

24.2.1. When delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

24.2.2. When sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

24.2.3. On the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

24.2.4. On the tenth business day following mailing, if mailed by airmail, postage prepaid.

24.3 In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

## **25. DISPUTE AND RESOLUTION**

25.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

25.2 The seat of the arbitration under the Agreement shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.

## **26. LAW AND JURISDICTION**

26.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising there from or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

26.2 Subject to the provisions of Clause 24 of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising there from or associated therewith)

## RECRUITIVE LIMITED SERVICE LEVEL AGREEMENT

We pride ourselves on the high level of client care we deliver, providing both rapid and quality support, which is backed by friendly and helpful staff that truly value your business.

We positively detest automated ticket systems and help lines! We deliver good old-fashioned quality client care with real people on the other end of the phone that always respond immediately.

We aim to deliver the best client service in the market which is why we appoint a dedicated Account Manager who, from day one, will ensure every aspect of your account is running smoothly. As your business grows, so will our support. We also provide unlimited training and immediate technical support as and when required.

Our award-winning service is why so many of our clients choose us over our competitors.

### 1. HELPDESK TECHNICAL/SERVICE SUPPORT

1.1 Recrutive shall provide the Customer with support during normal business hours 09.00 - 17.00 GMT Monday to Friday excluding Bank Holidays.

1.2 The Administrators of the account will be the authorised personnel who contact Recrutive for technical/service support. Recrutive shall provide support services only to those specified set of users. Recrutive shall provide a designated Account Manager who will be assigned to the Customer's account and be responsible for all service/technical related matters.

1.3 Recrutive operate the below Service Levels, although we work to a much higher standard and endeavour to exceed all targets set.

- Emails Responses to general system queries: 1 - 6 hours
- Telephone Calls: 10 - 15 seconds

\*All calls are handled by our friendly receptionists and are transferred to your designated Account Manager. If they are not available, your call will be transferred to another member of the Client Services Team.

- Account Amendments/Updates such as adding a new User or Job Board: 1 - 6 hours
- Posting Failures: Checked Daily

\*All postings are monitored continuously, and we aim to rectify any issues without contacting you wherever possible.

- Full System/Service Failure. Example: Cannot access account

Recrutive commits to 99% system uptime availability during normal business hours. QA can request Service Credits for monthly availability less than 99% at a proportional rate to the monthly service fee.

Monthly Availability      Service Credit

99 – 100%

£0

< 99%

$(100\% - \text{Monthly Availability } \%) \times \text{Monthly } \pounds\text{Fee}$

- Part Service/System failure: Example: User specific or isolated account issue

Recruitive will inform your Account Administrator within 2 normal business hours of an expected time for resolution of any critical service issue. Should the service issue continue longer than the original estimation, further updates will be provided every thirty minutes until the service issue has been rectified”

- Minor Service/System Issues: Example: Logo not displaying correctly

Recruitive will inform your Account Administrator within 2 normal business hours of an expected time for resolution of any critical service issue. Should the service issue continue longer than the original estimation, further updates will be provided every thirty minutes until the service issue has been rectified”

1.4 The Customer's Account Administrators may contact Recruitive service team in order to report system issues that they cannot resolve themselves after they have performed a reasonable level of diagnosis. On reporting a defect, the Customer shall supply a detailed description of the defect and the circumstances in which it arose and shall submit sufficient material and information to enable us to duplicate the problem, for example a full screen-shot. We will operate to the same response times highlighted in section 1.3.

1.5 If for any reason Recruitive cannot fully resolve the reported issue within a specified period of time then Recruitive will give notification of the anticipated completion time and ensure that the customer is aware of progress.

1.6 The Account Administrator will also be provided with the Service Manager's contact details to be used in the event that a Technical/Service issue requires escalation, see section

## 2. 2. HELPDESK TECHNICAL/SERVICE CONTACTS

Support Telephone Number = 0345 60 00 550

Escalation route for all enquiries are as follows:

First Line: Account Manager - Steph Spillman/ [Steph@recruitive.com](mailto:Steph@recruitive.com)

Second Line: Service Manager - Helen Jankowski/ [helen@recruitive.com](mailto:helen@recruitive.com)

Third Line: Head of Technical Services – Brian Turner/ [brian@recruitive.com](mailto:brian@recruitive.com)

If your Account Manager is unavailable when you call you will be transferred to another member of the Client Services Team. Should all lines be busy then our receptionists will pass a message onto the team for immediate call back. The Service Manager is always copied into telephone messages and you should expect a call back within 1 hour

### **3. SERVICE AVAILABILITY**

3.1 Subject to any force majeure as specified in our main terms and conditions, Recruitivite will endeavour to maintain the services on a twenty-four-hour, seven day per week basis. This will be subject to any essential maintenance of Recruitivite systems. Recruitivite will inform the client by telephone and in writing, within 48 hours in advance of any scheduled maintenance. From time to time emergency maintenance is required which may make it impractical to give the Customer notice. The Company reserves the right to close down the hosting service without notice in the case of emergency maintenance.

3.2 Should these services not be available, to the Client, for a minimum period of twenty-four hours in any one period, then, without prejudice the Service Provider will extend any active agreement by the same period, without any financial compensation.

3.3 Should this period extend beyond five working days then, at the discretion of Recruitivite, a pro rata rebate may be issued but is limited to not exceed the original order value.

3.4 System downtime is measured from the time that Recruitivite is notified by the customer or vice versa to the time the Customer is once again able to access the Recruitivite Recruitment System.

### **4. AVAILABILITY MEASUREMENT**

All services are monitored by engineers 24/7 NOC. If any service is operating outside of predefined constraints, the engineer is alerted, 24 hours a day, 7 days a week, 365 days a year at the data centre to investigate and resolve. Recruitivite also regularly review our Disaster Recovery Plan.

### **5. SYSTEM MAINTENANCE**

5.1 Recruitivite understand that uptime is critical and shall always endeavour to keep any service interruptions to a minimum.

5.2 System Maintenance that may require interruption to the services shall not be performed during normal business hours unless otherwise agreed.

5.3 Recruitivite may interrupt the services to perform emergency maintenance at any time. In addition, Recruitivite may interrupt the services for scheduled maintenance, for example to perform major system upgrades, if it has given the Customer reasonable advance notice.

5.4 Maintenance includes all regularly scheduled error corrections, software updates and those upgrades limited to improvements to features.

5.5 Recruitivite shall use all reasonable endeavours to accommodate any reasonable changes in the services that may be requested by the Client, subject to the Client's acceptance of any related reasonable changes to the fees that may be due as a result of such changes.

5.6 Recruitivite shall maintain and update the services. During maintenance periods, Recruitivite may, at its discretion, upgrade versions, install error corrections and apply patches to the services. Recruitivite shall use all reasonable endeavours to avoid unscheduled downtime for Services maintenance.

### **6. THIRD PARTY SUPPLIERS**

Recruitivite are not responsible for the availability of any third-party Job Boards, Websites, or independent software suppliers, although Recruitivite will liaise and assist in resolving any service issues in relation to any third-party suppliers.

Recruitivite are responsible for the accessibility and operation of the hosting and support platform upon which our systems are hosted and operated. In the event of an incident please refer to Recruitivite's agreement outlined in Section 1, point 1.3



## 7. BACK UP SERVICES

All candidate CV's are stored within the customer's own database. Website data and databases within our cloud storage facility are backed up multiple times per day and stored in a separate, off-site facility. Our cloud platform system is bespoke, we retain backups for 30 days and can restore individual files or databases either through our online interface or directly in the centre. In the unlikely event of a complete server failure, we can restore the entire system from backups efficiently and expediently. Any claims for financial losses and damages in relation to the loss of data or in respect of the software solutions and services of Recrutive Limited will be dealt with via our Professional Indemnity Insurance Policies.

### SIGNATURES

#### 1. RECRUITIVE LIMITED

NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

#### 2. COHESION RECRUITMENT LIMITED

NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Want to know more?**

**Call 0345 60 00 550**

**Email [victoria@recrutive.com](mailto:victoria@recrutive.com)**

**Recrutive<sup>®</sup>**

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