



acolyte

ACOLYTE RESOURCE GROUP LIMITED

TERMS OF BUSINESS

Thank you for purchasing a subscription to Acolyte, a web-accessible application developed and maintained by Acolyte Resource Group Limited a company incorporated in England and Wales with registered number 07183288 whose registered office is at 14 Marshalsea Road, London, SE1 1HL (“Acolyte”).

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise requires the following words shall have the following meanings:

- **Access Date**  
The date on which the Client first gains access to the Application.
- **Agreement**  
Means the Order Form and Terms of Business.
- **Application**  
Means the web-based application developed and maintained by Acolyte, which assists Clients with their staffing needs. Reference to the “Application” includes Intelligence Reports and Insight Reports delivered through the Application.
- **Authorised User**  
Means an employee or an independent contractor of the Client who meets the requirements of clause 6 and is registered to receive a User ID to access and use the Application on behalf of the Client.
- **Briefing Report**  
A report created by Acolyte as a result of receiving a Job Description.
- **Business Day**  
Means a day other than a Saturday, Sunday or public holiday, when banks in England and India are open for business.
- **Candidate**  
Individual persons identified by the Application as being relevant to a Search as “Candidate Data” shall be construed accordingly.
- **Change Request & Change Notice**  
Have the definitions given in clauses 5.1 and 5.2.
- **Client Data**  
The data provided by the Client for the purpose of using the Application or commissioning Intelligence Reports.
- **Job Description**  
Means the Client’s requirements relating to a Search, provided to Acolyte which results in the creation of a Briefing Report.
- **Commencement Date**  
The date on which this Agreement comes into effect, which shall be the date on which it is signed or the Access Date, whichever is the earlier.
- **Confidential Information**  
Information that is proprietary or confidential to either party and is either clearly labelled as such or identified as Confidential Information in clause 11.5. Job Descriptions, Briefing Reports and Intelligence Reports shall all be the Confidential Information of the Client.
- **Data Protection Legislation**  
Means all applicable data protection and privacy legislation, regulations and guidance including Regulation (EU) 2016/679 (the “General Data Protection Regulation” or “GDPR”) and the Privacy and Electronic Communications (EC Directive) Regulations including any law based on or seeking to enact any such provisions in the United Kingdom to the GDPR and any applicable guidance or codes of practice issued by the European Data Protection Board or Information Commissioner from time to time (all as amended, updated or re-enacted from time to time).
- **End User Terms**  
The terms of use presented to each Authorised User at the time of their initial log in into the Application, which is available on the Acolyte [website](#) and which may be amended at any time by the Company.
- **Fees**  
Means the charges as set out in the Order Form or any Change Notice.

- **Good Industry Practice**  
Means the use of standards, practices, methods and procedures conforming to Data Protection Legislation and the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the provision of similar services to an entity of a similar size and nature as Acolyte under the same or similar circumstances.
- **Initial Term**  
The initial term of this Agreement as set out in the Order Form.
- **Insight Report**  
A report created by Acolyte and made available to all Clients through the Application, on topics of general interest relating to aspects of the labour market.
- **Intellectual Property Rights**  
Means all trade secrets, patents and patent applications, trademarks and service marks (whether registered or unregistered and including any goodwill acquired in such trademarks and service marks), trade names, business names, internet domain names, e-mail address names, copyrights (including rights in computer software, object code and source code), moral rights, database rights, design rights, rights in know-how, rights in confidential information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.
- **Intelligence Report**  
A report which is commissioned by the Client into an aspect of its staffing needs or staffing challenges, or an aspect of the job market as a whole.
- **Licence**  
Means the permission to access and use the Application granted to the Client and its Authorised Users in accordance with the terms of this Agreement.
- **Malware**  
Anything or device (including any software, malware, 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, malicious code and other similar things or devices.
- **Normal Business Hours**  
9:00 am to 5:00 pm UK time, each Business Day.
- **Parties**  
Means the parties to this Agreement, being Acolyte and the Client.
- **Renewal Term**  
The period described in the Order Form, and “Renewal Date” shall be construed accordingly.
- **Scope**  
The details of the Search or the Intelligence Report to be performed by the Application, as further set out in clauses 3 and 4.
- **Search**  
A recruitment campaign run and directed by the Client in order to fill a vacancy in its staff, in relation to which the Client has created a Job Description and supplied it to Acolyte.
- **Security Breach**  
Means any actual or reasonably suspected: (a) unauthorised use of, or unauthorised access to the Application or the computer systems used by or on behalf of Acolyte; (b) damage to, or inability to access the Application due to malicious use or an attack; (c) unauthorised access to, theft of or loss of the data of any person; (d) unauthorised use of Client Data for the purposes of actual or attempted theft, fraud, identity theft or other misuse; (e) unauthorised disclosure of Confidential Information; or (f) breach of, or transmission of malicious code to, computer systems owned or operated by Acolyte;
- **Service Levels**  
Means the service levels set out in Schedule 1.
- **Term**  
The period of time during which this Agreement remains in force, being the Initial Term and any Renewal Terms.
- **User ID**  
Means the unique user identification assigned to an Authorised User to access and use the Application and the Services.

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

1.4 Unless the context otherwise requires, words in the singular shall include the plural, and a reference to one gender shall include a reference to the other genders.

1.5 A reference to a statute or statutory provision is a reference to it as amended from time to time.

1.6 A reference to writing or written includes e-mail.

## 2. THE APPLICATION

- 2.1 In consideration of the Client's acceptance of this Agreement and the Client's payment of the Fees set out in the Order Form, Acolyte shall provide access to the Application and hereby grants to the Client a non-exclusive and non-transferable Licence to use the Application on the terms set out in this Agreement. The rights provided under this clause are granted to the Client and to any other entity within the Client's group of companies.
- 2.2 The Licence permits the Client to:
- 2.2.1 access and use the Application solely for their own internal business purposes and the purpose of assisting with its staffing needs;
- 2.2.2 access and use Insight Reports, as set out in the Order Form.
- 2.3 This Agreement shall not prevent Acolyte 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.
- 2.4 Acolyte shall use reasonable endeavours to make the Application available at all times except during times of scheduled maintenance. Acolyte shall at all times use all reasonable endeavours to keep any service interruptions to a minimum and achieve the Service Levels. If Acolyte fails to meet a Service Level then, without prejudice to the remainder of this clause Acolyte shall use all reasonable endeavours to minimise the impact of such failure on the Client, and prevent such failure from recurring.
- 2.5 Acolyte warrants that:
- 2.5.1 The Application:
- (i) was developed in accordance with Good Industry Practice;
  - (ii) complies with all applicable laws and regulations with respect to its functioning under this Agreement; and
  - (iii) not infringe upon any Intellectual Property Rights of any third party.
- 2.5.2 it will use Good Industry Practice in compiling Intelligence Reports and Insight Reports; and
- 2.5.3 it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 2.6 If Acolyte receives written notice of any breach of warranty from the Client by Acolyte, then Acolyte shall at its own expense and within a reasonable time but no longer than 60 days (unless otherwise agreed by the Client) after receiving the notice use reasonable endeavours to remedy the defect in question. When notifying a defect the Client shall (so far as it is able) provide Acolyte with a documented example.
- 2.7 Except as expressly provided in this Agreement no warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, performance, satisfactory quality or (in spite of anything contained in any Schedule) fitness for purpose of the Application is given by Acolyte and all such warranties, conditions, undertakings and terms are excluded.
- 2.8 Acolyte will have no obligation for any failure of the Application to operate substantially in accordance with this Agreement if the failure:
- 2.8.1 is due to a breach by the Client of this Agreement;
- 2.8.2 is caused by the Client's negligence, abuse, misapplication, or misuse of the Application;
- 2.8.3 relates to or arises from the Client's own computer equipment or computing environment;
- 2.8.4 cannot be remedied using commercially reasonable endeavours.
- 2.9 The Client understands that the Application is not accessible offline, and the Client shall remain responsible for being able to access the internet. The Client must ensure that its computer equipment and any third party software upon which the Application relies (such as an internet browser) are not malfunctioning in a way that adversely affects the operation of the Application. Acolyte will provide all reasonable assistance to Client to ensure Client can comply with this clause 2.9.

- 2.10 The Client shall reasonably co-operate with Acolyte's personnel in the diagnosis of any error or defect in the Application to the extent necessary to enable Acolyte to perform its obligations under this Agreement.
- 2.11 Acolyte represents and warrants that the servers upon which the Application is hosted have been scanned for Malware using reputable commercially-available Malware-detection devices and software on a regular basis, and any detected Malware shall be promptly dealt with.
- 2.12 The Client is responsible for taking commercially reasonable measures to prevent Malware from entering its systems and to ensure the security of its systems and its access to and connection with the Application.
- 2.13 The Client shall not, and shall not allow any Authorised User or third party to, in whole or in part:
- 2.13.1 use the Application, Intelligence Reports or Insight Reports for the purposes of revenue generation on its own account, for instance through re-sale of Intelligence Reports, either during the Term or afterwards;
  - 2.13.2 (except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties) alter, adapt, merge, modify, port, translate, decompile, disassemble, create derivative works from or reverse engineer the Application, or otherwise attempt to derive the source code or engage in any other activities to obtain underlying information that is not visible to a user in connection with normal use of the Application, or make any copy of the Application or any part thereof in any form;
  - 2.13.3 transfer, sublicense, rent, lease, distribute, sell, or grant any rights or otherwise commercially exploit, or make the Application or the Intelligence Reports available to anyone, except as expressly permitted;
  - 2.13.4 use the Application or Intelligence Reports to provide services to third parties;
  - 2.13.5 publicise or distribute any registration code algorithms, information or registration codes used by the Application or knowingly take any action that would cause any element of the Application to be placed in the public domain, except as expressly permitted;
  - 2.13.6 gain or attempt to gain unauthorised access to the Application;
  - 2.13.7 remove any proprietary notices or marks from the Application or Intelligence Reports or Insight Reports;
  - 2.13.8 use or access the Application to build or commission a software application or process that competes with the Application; or
  - 2.13.9 engage in any activity which would be unlawful or would constitute a breach of any applicable law or regulation or result in Acolyte being in a breach of any application law or regulation;
  - 2.13.10 attempt to interfere with the proper functioning of the Application or attempt to disrupt, diminish the quality of, interfere with the performance of, or impair the functionality of, the Application, including transmitting any Malware;
  - 2.13.11 attempt to circumvent, disable, or otherwise interfere with security-related features of the Application or features that enforce limitations on use of the Application.
  - 2.13.12 access, store, distribute or transmit any Malware, or any material during the course of its use of the Application that are illegal or cause damage or injury to any person or property including the Application.
- 2.14 Acolyte reserves the right, without liability or prejudice to its other rights to the Client, to suspend or disable the Client's access to the Application where there is evidence that the Client is in breach of the provisions of this clause.

### 3. SEARCHES

- 3.1 This section shall apply where the Client has a subscription enabling it to perform Searches.
- 3.2 The Client shall be entitled to perform the number of Searches stated on the Order Form during the Initial Term and any Renewal Term, as appropriate.
- 3.3 The Client shall commence a Search by uploading a Job Description relating to that Search at any time during the Term. The submission of a Job Description constitutes an irrevocable instruction to Acolyte to proceed with the Search in accordance with this Agreement.
- 3.4 Any Searches which have not commenced by the end of the Initial Term or a Renewal Term, by the uploading of a Job Description to the Application, shall expire. Any Searches which have commenced prior to the end of the Initial Term or a Renewal Term, shall be allowed to continue, and the duration of the Initial Term or Renewal Term, as appropriate, shall be extended by a further three months where the Agreement is otherwise due to be terminated.
- 3.5 The Client shall provide reasonable assistance to Acolyte, including by way of telephone conference call, in the creation of the Briefing Report.
- 3.6 Acolyte shall notify the Client when the Briefing Report is ready for review, and the Client shall review the Briefing Report within 5 Business Days of such notification (“Review Period”).
- 3.7 If the Client informs Acolyte of any errors or omissions in the Briefing Report within the Review Period, Acolyte shall amend the Briefing Report accordingly, and the process above shall be repeated.
- 3.8 If the Client makes no comment within the Review Period, the Briefing Report shall be deemed final at the end of the Review Period, and no further change shall be permitted, except as provided below. Following the end of the Review Period, the Application uses the Briefing Report to generate the Scope, and the Application executes the Scope in order to perform the Search.
- 3.9 The Client may request changes to the Scope at any time after the end of the Review Period, by submitting a “Change Request” through the Application or by email.
- 3.10 Within 5 Business Days of receiving a Change Request, Acolyte shall notify the Client of the changes to the Fees and any timing estimate resulting from the Change Request (“Change Notice”).
- 3.11 If the Change Notice is accepted by the Client within 10 Business Days of receipt, Acolyte shall amend the Scope, and the steps above relating to the Review Period shall apply.
- 3.12 Acolyte warrants and represents that it shall by means of the Application use reasonable endeavours to find Candidates for the Search, but gives no guarantee that any given Search will result in the placement of a Candidate, or that any suitable Candidates will be found. The Client acknowledges and accepts that its Search operates within parameters (such as location and remuneration) that are outside of the control of Acolyte, that the ultimate decision to offer employment to a Candidate rests with the Client, and the decision as to whether to accept the offer rests with the Candidate.
- 3.13 Acolyte shall have no liability to the Client resulting from the Client’s decision to engage a Candidate sourced by the Application, and fully excludes liability for any losses or damage arising as a result of the Client’s decision to engage the Candidate.

## 4. INTELLIGENCE REPORTS

- 4.1 This section shall apply where the Client has a subscription enabling it to commission Intelligence Reports.
- 4.2 The Client shall commission an Intelligence Report by selecting the appropriate topics within the Application.
- 4.3 The Client agrees to provide Acolyte with reasonable assistance, including access to Client Data and personnel, as may be reasonably required to compile a Scope, which shall be executed by the Application in order to create the Intelligence Report.
- 4.4 The Company undertakes that it will compile Intelligence Reports with reasonable skill and care and in accordance with Good Industry Practice, using reputable sources of data, in a timely and efficient manner.
- 4.5 The Client accepts and acknowledges that Intelligence Reports are compiled using data sourced, compiled and provided by third parties, and that the accuracy and completeness of Intelligence Reports cannot be guaranteed by Acolyte. Acolyte shall have no liability for any losses arising as a result errors or omissions in an Intelligence Report, or as a result of the Client's reliance on an Intelligence Report.
- 4.6 The restrictions set out in clause 2.13 above shall apply, as relevant, to the Client's usage of Intelligence Reports.
- 4.7 The process relating to changes to an Intelligence Report required by the Client shall be as set out in clauses 3.9-3.11 above, mutatis mutandis.

## 5. AUTHORISED USERS

- 5.1 The Client shall designate its Authorised Users, with no limit in number, and may make changes at any time. The Client shall be responsible for maintaining a current and accurate written list of Authorised Users and shall provide such list to Acolyte on request.
- 5.2 Authorised Users shall be the only users of the Application, and Authorised Users must access the Application solely for the benefit of the Client.
- 5.3 To be an Authorised User, an individual must:
  - 5.3.1 have authorisation from the Client to access and use the Application;
  - 5.3.2 complete the registration process, and keep such registration information current during the Term; and
  - 5.3.3 have a User ID, such as his or her email, to enable his or her access to the Application.
- 5.4 The Client is responsible for all damage and losses arising as a result of Authorised Users' access to and use of the Application, such as, for instance, the granting of access to Candidate Data to third parties by an Authorised User in breach of this Agreement and Data Protection Legislation. Any breach of this Agreement by any Authorised User will be deemed to be a breach of this Agreement by the Client, and the Client will be liable for any losses arising.
- 5.5 The Client shall notify Acolyte as soon as reasonably possible if the Client becomes aware of any unauthorised use of the whole or any part of the Application by any of the Client's employees, contractors or officers, or anyone else.
- 5.6 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Application, and in the event of any such unauthorised access or use, promptly notify Acolyte.
- 5.7 In relation to the Authorised Users, the Client undertakes that:
  - 5.7.1 it shall procure that each Authorised User abides by the End User Terms;
  - 5.7.2 it shall not knowingly permit anyone other than an Authorised User to use or access the Application;
  - 5.7.3 each Authorised User shall keep a secure password for his use of the Application and that each Authorised User shall keep his password confidential and not share their log-in credentials with anyone else, including other Authorised Users or Client personnel;
  - 5.7.4 authorised Users shall use only their own User IDs and never share their User ID; keep their respective User ID and password information secure and confidential; and change their password as frequently as is reasonably required by Acolyte;
  - 5.7.5 it shall adopt and maintain reasonable security precautions for User IDs to prevent their disclosure to and use by unauthorised persons and promptly notify Acolyte upon becoming aware that the security or integrity of a User ID or password has been compromised;
  - 5.7.6 it shall permit Acolyte to audit the Client's use of the Application in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per year, at Acolyte's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Client's normal conduct of business;

- 5.7.7 if any of the audits referred to in clause 5.7.6 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Acolyte's other rights, Acolyte shall promptly disable such passwords and Acolyte shall not issue any new passwords to any such individual.
- 5.8 The Client shall not, and shall not permit any Authorised User or third party to, access or use the Application in any way that:
- 5.8.1 infringes, misappropriates or violates any Intellectual Property Rights or publicity, privacy or other right of Acolyte or any third party;
- 5.8.2 violates any applicable laws, statutes, ordinances, rules or regulations or any judicial or administrative orders; or
- 5.8.3 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities.
- 5.9 In addition to any other rights Acolyte may have, Acolyte may, without liability, remove or disable access by any Authorised User that violates the foregoing restrictions.

## 6. PAYMENT OF FEES

- 6.1 All amounts payable to Acolyte by the Client under this Agreement are (except where specifically agreed to the contrary) exclusive of applicable Value Added Tax.
- 6.2 The Client shall pay the Fees set out on the Order Form in accordance with the payment milestones set out in the Order Form and any Change Notice.
- 6.3 Where Acolyte agrees to monthly payments, these shall be paid by direct debit on dates to be agreed between the parties, with an invoice issued annually.
- 6.4 Where Acolyte agrees to annual or half-yearly payments, these shall be made within 14 days of an invoice for the relevant amount.
- 6.5 Intelligence Reports shall either be paid within 30 days of commencement of the project or in advance of its delivery to the client - whichever is sooner.
- 6.6 In the event of late payment of any sum validly due under this Agreement Acolyte reserves the right (in addition to its other rights) to charge interest from the due date in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the outstanding balance until payment is received in full by Acolyte.
- 6.7 Acolyte may review and increase the Fees annually at the end of the Initial Term or each Renewal Term, as appropriate, and shall notify the Client 30 days before implementing any increase.
- 6.8 Acolyte shall not increase its Fees before 01/01/2021.
- 6.9 Where Acolyte agrees to allow its client to access the platform for a "Pilot", payment shall be made immediately, upon commencement of the project.

## 7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Application, all Intellectual Property Rights contained in or used by Application and the Intelligence Reports and the Insight Reports, Acolyte's Confidential Information, and all other materials provided by Acolyte and accessible to the Client and Authorised Users are and will remain the exclusive property of Acolyte or its licensors, as applicable.
- 7.2 The Client only has a limited and temporary right to the Application under this Agreement.
- 7.3 All Intellectual Property Rights, in particular copyright, in the Intelligence Reports and Insight Reports shall remain vested in Acolyte. Acolyte hereby grants to the Client a permanent, irrevocable, worldwide licence to use the Intelligence Reports for any purpose whatsoever, subject to clause 4.
- 7.4 The Client shall not challenge or contest the rights to or ownership of the Application by Acolyte or otherwise attempt to assert any proprietary rights in the Application or any Intelligence Report or Insight Report.
- 7.5 The Client is and will remain the sole owner of the Client Data, and grants to Acolyte a limited licence to use the Client Data (and any other Intellectual Property Rights owned by the Client reasonably required by Acolyte for performing its obligations under this Agreement) for the purposes of this Agreement, in particular for the purpose of researching and compiling Intelligence Reports as requested by the Client. This Agreement does not grant Acolyte any rights to, or in, any Intellectual Property Rights or any other rights or licences in respect of the Client Data, the Client's Confidential Information or Client's Intellectual Property Rights.
- 7.6 Any designations and proprietary notices placed on the Application or Intelligence Reports or Insight Reports shall not be removed or altered and Acolyte asserts all moral rights to be identified as the author of the works.
- 7.7 The Application may include elements subject to various "open source" licenses and/or third party licenses and is made available pursuant to the terms of those licenses without warranty of any kind, including express or implied warranties or warranties of merchantability or fitness for a particular purpose. The Client acknowledges that Acolyte will be obtaining data held by third parties, and Acolyte bears no liability for any errors or omissions in such data. The acquisition of the data may be subject to licensing terms which are more onerous or restrictive than the existing licensing terms in the Agreement. Acolyte will bring such terms to the attention of the Client in a timely manner, and the Client hereby agrees to be bound by such terms.
- 7.8 The Client agrees that Acolyte may include the Client's name and logo on Acolyte's [website](#), social media pages and in promotional materials, such inclusion being limited only to express the fact that the Client is a user of the Application, and not for any other purpose.

## 8. CANDIDATE DATA

- 8.1 Acolyte shall, in providing access to the Application and in preparing Intelligence Reports and Insight Reports, comply with Data Protection Legislation and with its Data Protection & Privacy Policy relating to the privacy and security of the Candidate Data, which is available on the Acolyte [website](#). Acolyte reserves the right to amend its policies as required.
- 8.2 If Acolyte 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 Acolyte shall be a data processor and in any such case:
- 8.2.1 the Client acknowledges and agrees that the personal data shall be stored within the EU but may be accessed or processed in accordance with applicable legislation outside the EU or the country where the Client and the Authorised Users are located in order to provide access to the Application, and perform Acolyte's obligations under this Agreement;
- 8.2.2 the Client shall ensure that the Client is entitled to transfer the relevant personal data to Acolyte so that Acolyte may lawfully use, process and transfer the personal data in accordance with this Agreement on the Client's behalf;
- 8.2.3 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;
- 8.2.4 Acolyte 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;
- 8.2.5 each party shall take appropriate administrative, physical, technical and organisational measures against unauthorised or unlawful processing of the personal data and Candidate Data or its accidental loss, destruction or damage; and
- 8.2.6 the Parties agree to regulate the processing of personal data under the terms of Schedule 2.
- 8.3 The Client represents that the Client either has established or will promptly establish appropriate confidentiality, privacy and security policies and safeguards consistent with Data Protection Legislation, and industry standards and that the Client will educate Authorised Users on these policies and safeguards.
- 8.4 Acolyte shall follow its archiving procedures for Candidate Data. In the event of any loss or damage to Candidate Data, the Client's sole and exclusive remedy shall be for Acolyte to use reasonable commercial endeavours to restore the lost or damaged Candidate Data from the latest back-up of such Candidate Data maintained by Acolyte in accordance with the archiving procedure. Acolyte shall not be responsible for any loss, destruction, alteration or disclosure of Candidate Data caused by any third party (except those third parties sub-contracted by Acolyte to perform services related to Candidate Data maintenance and back-up).

## 9. CONFIDENTIALITY

- 9.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement as well as the operation of the Application. A party's Confidential Information shall not be deemed to include information that:
- 9.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 9.1.2 was in the other party's lawful possession before the disclosure;
  - 9.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 9.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 9.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 9.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, 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.
- 9.3 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.
- 9.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party. Notwithstanding the foregoing, Acolyte shall at all times be liable for the conduct of its subcontractors.
- 9.5 The Client acknowledges that details of the Application constitute Acolyte's Confidential Information, and Acolyte acknowledges that the Client Data and all data contained in Intelligence Reports are the Confidential Information of the Client.
- 9.6 This clause 9 shall survive for five (5) years after termination of this Agreement, however arising.

## 10. LIABILITY

- 10.1 Acolyte shall indemnify the Client in respect of any losses, costs (including reasonable legal fees), expenses, damages or liability suffered by the Client to the extent these arise as a result of:
- 10.1.1 any death or personal injury caused to any person by the negligence of Acolyte or its employees;
  - 10.1.2 any breach by Acolyte of its obligations, warranties and representations under Clause 9 (Confidential Information); and
  - 10.1.3 or, in connection with, any breach of Data Protection Legislation caused by:
    - (i) Acolyte's breach of the processes and policies set out or referred to in Schedule 2 or elsewhere in this Agreement; and
    - (ii) Acolyte, through its acts or omissions, being in breach of, or otherwise causing Client to be in breach of the Data Protection Legislation,save where Acolyte's breach or non-compliance is solely attributable to Client's breach of its obligations under this Agreement.
- 10.2 In the event of any infringement of any third party's intellectual property rights, Acolyte will at its own expense:
- 10.2.1 modify or replace the Application or any infringing part of it with a compatible, functionally equivalent and non-infringing application; or
  - 10.2.2 secure the right of the Client to continue using the Application.
- 10.3 Should the remedies in clause 10.2 not be reasonably available within 30 days of the notification of the infringement to Acolyte then this Agreement may be immediately terminated in whole or in part by either party and the Client shall be entitled to a refund for sums already paid for the unused part of the term on a pro-rata basis.
- 10.4 Acolyte shall defend, indemnify and hold harmless the Client against any direct losses, costs (including all legal fees), expenses, damages or liability resulting from or incurred by the Client as a direct result of any alleged or actual infringement of any third party's Intellectual Property Rights or any valid claim by a third party that the normal use of the Application infringes the Intellectual Property Rights of such third party provided that:
- 10.4.1 Acolyte is given immediate and complete control of such claim if allowed by applicable regulations;
  - 10.4.2 the Client makes no admissions or statements without Acolyte's prior written consent (not to be unreasonably conditioned, withheld or delayed); and
  - 10.4.3 the Client gives Acolyte all reasonable assistance at Acolyte's expense defending such claim.
- 10.5 Save for the indemnities given by Acolyte above, Acolyte's liability to Client for damages for any loss or claim under this Agreement will under no circumstances exceed the total fees paid to Acolyte during the preceding (12) twelve months from the date such liability first arose. In particular, Acolyte shall have no liability to the Client for any losses, costs, fees, expenses or fines arising as a result of failure to locate an appropriate Candidate or from the Client's decision to engage a Candidate sourced by the Application, and fully excludes liability for any losses or damage arising as a result of the Client's decision to engage any Candidate. Further, Acolyte shall have no liability for losses arising as a result of the Client's reliance on Intelligence Reports and Insight Reports, and the Client acknowledges that its use of the Application is based on accepting the data generated by the Application (including Candidate Data and Intelligence and Insight Reports) on an "as is" basis.

10.6 During the term of this Agreement Acolyte shall maintain in force, with a reputable insurance company a professional indemnity insurance of an amount not less than £1,000,000 and shall, on the Client's request, produce the insurance certificate giving details of cover.

10.7 Notwithstanding any provisions in this Agreement, neither Party will under any circumstances be liable under the law of contract, tort or otherwise, for any loss of profits, loss of business, loss of revenue or savings or goodwill or for any consequential or indirect or special loss or damage or anticipated savings, (regardless of whether any of these types of loss or damage are, indirect or consequential),

however caused, arising out of or in connection with this Agreement. The parties agree that loss of data (to include any corruption and cost of reconstituting data) shall be considered a direct loss for the purposes of this Agreement.

10.8 Nothing in this Agreement shall operate to limit or exclude any liability for i) death or personal injury caused by negligence, breach of intellectual property rights, breach of Confidentiality, fraud, fraudulent misrepresentation or any other liability which may not be excluded by law; or ii) any claim under the indemnities in Clause 10.4.

## 11. TERM AND TERMINATION

- 11.1 This Agreement shall be effective from the Commencement Date and shall continue in full force and in effect unless and until terminated in accordance with the provisions of this clause 11 or the Order Form.
- 11.2 Either party may immediately terminate this Agreement (including the Licence within it) if the other party:
- 11.2.1 materially breaches this Agreement by failure, neglect or refusal to comply with any of the material terms and conditions of this Agreement and the defaulting party has failed to remedy that breach (if the breach is capable of remedy) within 30 (thirty) days of the date of notice from the non-defaulting party specifying the breach; or
  - 11.2.2 the other party ceases trading, or becomes apparently insolvent, or has a trustee in sequestration appointed, combines with its creditors, or has a liquidator, receiver or administrator appointed (or an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given over all or any of its assets) over all or any of its assets other than for the purposes of a solvent amalgamation or reconstruction, or undergoes any analogous act or proceeding under foreign law to any of those mentioned in this Clause 11.2.1 or if the Client has reasonable cause to suspect that any of the events in this Clause 11.2.1 is likely to happen.
- 11.3 Termination will not affect the existing rights and or liabilities of either party.
- 11.4 Subject always to Client's right to terminate in clause 11.2, the Client shall not terminate this Agreement during the Initial Term. After the Initial Term, this Agreement shall renew automatically for Renewal Terms as set out in the Order Form, and either party may give 3 months' notice of termination at any time, such notice to expire at the end of the Initial Term or the then current Renewal Term, as appropriate.
- 11.5 Upon termination, the Licence to the Application in Clause 2 shall be terminated and all access to the Application, Intelligence Reports, Insight Reports and Candidate Data will cease.
- 11.6 Should there be an increase in the Fees by Acolyte, the Client will be entitled to terminate the Agreement on giving 30 days' written notice to Acolyte, such notice to expire at the end of the Initial Term or the then current Renewal Term, as appropriate.
- 11.7 On the termination or expiry of this Agreement however caused the Client shall pay to Acolyte all sums due to Acolyte up to and including the date of expiry or termination. Within 14 days following termination and subject to the payment of applicable Fees in full, the Client may request a single encrypted copy of the Intelligence Reports as at the date of termination, which shall be sent to the Client by secure means, and at Acolyte's expense.

## 12. GENERAL

- 12.1 Neither party shall, for the duration of this Agreement, and for a period of six months following termination, directly or indirectly induce or attempt to induce any employee of the other party who has been engaged in the provision, receipt, review or management of performance of obligations under this Agreement or otherwise in connection with this Agreement to leave the employment of that other party.
- 12.2 A delay or failure by either party to exercise any right shall not be treated as a waiver of any such right or any other rights. Consent by either party to a breach of any express or implied term of this Agreement shall not constitute consent to any subsequent breach. If any provision of this Agreement is not enforceable, the remainder of this Agreement shall remain in full force and effect.
- 12.3 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior discussions, understandings and agreements between the parties and their agents and all prior representations and expressions of opinion by any party to the other party.
- 12.4 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 12.5 Neither party shall be responsible for any failure or delay in complying with the terms of this Agreement (including but not limited to delays in delivery), where the failure or delay result from events beyond that party's control. Where such events continue for more than 60 days, either party may terminate on giving notice to the other.
- 12.6 For the purpose of Section 1(2) of the Contracts (Rights of Third Parties) Act 1999 the parties state that they do not intend any term of this Agreement to be enforced by any third parties but any third party right which exists or is available independently of the Act is preserved.
- 12.7 Any legal notices or demands shall be in writing and sent by registered post or delivered by one party to the other at the most recently specified address. Notices delivered by courier shall be deemed to have been received upon the signing by the recipient of the confirmation note of the courier.
- 12.8 This Agreement and any matters relating to it shall be interpreted under the laws of England and the parties agree to the exclusive jurisdiction of the English Courts.

## SCHEDULE 1

### SERVICE LEVEL AGREEMENT

Case Priority Levels and Target Response Times.

Acolyte shall use a web-based support desk system to capture support incidents and keep Authorised Users informed at key moments of the support incident lifecycle.

Case Priority Level	Description	Target Response Time	Target Resolution Time
Critical	<p>Major application component is down or otherwise unusable via the Application, which impacts ALL Users who are unable to use the Application in the Client's environment and there is no workaround.</p> <p>Web services module is down in production and is affecting major functionality within the Application.</p>	Acolyte personnel will begin working the issue usually within 1 hour of receipt during Normal Business Hours.	4 Business Hours
High	Major application component is down or otherwise unusable via the Application, which impacts an individual User or subset of Users who are unable to use the Acolyte Application in Client's production environment.	Acolyte personnel will begin working the issue usually within 2 hours of receipt during Normal Business Hours.	8 Business Hours
Medium	<p>Major application component is down or otherwise unusable via the Application and there is a workaround.</p> <p>Minor Application component is down or otherwise unusable, but it is not preventing the User from doing his/her job.</p> <p>Any issues defined as Critical or High in production are considered Medium in test environments (test, UAT, sandbox, development, etc.).</p>	Acolyte personnel will usually begin working the issue within 2 hours of receipt during Normal Business Hours.	5 Business Days
Low	<p>Cosmetic issues related to the Application.</p> <p>General Client questions.</p>	Acolyte personnel will usually begin working the issue within 2 hours of receipt during Normal Business Hours.	10 Business Days

All cases will be prioritised according to the Case Priority Levels above. However, the Client may indicate the importance of their cases within the case priority levels noted above by providing an urgency rating as follows – Urgent, High, Standard. Once the Acolyte support representative has reviewed the case, the case may be re-classified with a different Case Priority Level. Feature requests and other initiatives are not assigned a priority but may be assigned an agreed upon due date.

Initial response times would be in relation to support hours of 9:00 am to 5:00 pm GMT Monday to Friday (Normal Business Hours), so that if an issue is reported outside of those hours the response will be within 1 or 2 hours, depending on 'Case Priority Level' from 09:00 GMT the next Business Day.

## RESOLUTION TIMES

Acolyte has a maximum target resolution time by priority levels within the support coverage times, although, we aim to resolve issues much earlier. There are certain circumstances in which the monitoring and recording of resolution times might pause until certain criteria have been met, such as:

- The user has not clearly articulated the problem.
- If the diagnostic team cannot replicate the issue and need further information.
- Acolyte is awaiting a reply from an end user for clarification.

## SCHEDULE 2

**Acolyte will carry out processing of personal data in accordance with the Data Protection Act 1998, as amended and supplemented by the General Data Protection Regulation 2018, and the specific processes which shall be followed are set out below.**

### **One – Personal data processing**

The provision of services may entail the Processor's access to confidential information and personal data for which the Client is responsible. Consequently, Acolyte will be considered Data Processor, and any processing of personal data for which the Client is responsible will involve the different processes as agreed in the Agreement.

In order to render the services contained in this Agreement, the Client will make the Client Data, as applicable, available to Acolyte.

### **Two – Confidentiality and duty of secrecy**

Unless the Parties otherwise agree, the Parties and all other companies belonging to its group or related thereto will keep the utmost secrecy of this Agreement, their business and any information and documentation related to the other Party, of which they may become aware as a result of performing the Agreement. Furthermore, the Processor hereby specifically undertakes to treat as confidential any information for which the Client or third parties may be responsible, which it may access due to providing its services, and undertakes to maintain the secrecy of such data.

For these purposes, the Processor hereby undertakes to take any measures that may be necessary, with respect to its employees or collaborators, in order for the latter to be informed of the need to fulfil its binding obligations as Processor and which, consequently, they must uphold, as well as to guarantee that any personal data known by virtue of this Agreement remain secret, even after the Agreement is terminated for any reason. To do this, the Processor will duly inform its employees or collaborators (through training, awareness campaigns, etc.), in order to ensure that such obligations are fulfilled. The foregoing will be comprehensibly notified of the existence of this Agreement, of any security rules affecting the development of their tasks, the consequences that may ensue in the event of breach

and the confidential nature of such information and the duty to keep all personal data secret; this duty of confidentiality and secrecy will remain even after the relationship with the Processor has ended.

This duty of information and confidentiality on the part of the Processor's employees and collaborators will be carried out in such a way as to allow the Client to receive documentary evidence that such obligation has been fulfilled.

In addition, such confidential information and documentation may not be used for any purpose other than fulfilment of the object of this Agreement, unless such information has become general knowledge and except as regards any information required by law or further to any other applicable and mandatory regulations.

Once this Agreement has ended, the confidentiality obligation and duty of secrecy foreseen in this clause will remain valid indefinitely, even after the contractual relationship with the Controller has ended, for any reason.

If any misconduct is detected, by any person rendering professional services for the Processor (access to information not inherent to his tasks, misuse of user names and passwords, if a user is granted more authorisations that are strictly necessary, etc.), the Processor will be responsible and expressly obliged to immediately notify about it the Client, providing a detailed report of the facts.

### **Three – Controller's instructions**

The Processor undertakes to process any personal data it may access exclusively in accordance with any written instructions provided by the Controller for this purpose. This commitment will also cover any international personal data transfers to a third country or international organisation.

Consequently, any data that is known or obtained by virtue of this Agreement:

- may not be used for any other purpose than performance thereof; they will be confidential and may not be published or made available to third parties without the Controller's prior written consent. In no case will such data be used privately.
- will not be notified to third parties without the Client's prior written consent. Consequently, the Processor, in writing and before the Client authorises such communication, will identify the entity(ies) receiving the data, which data or category of personal data will be reported and any security measures applicable.

In this regard, the Processor hereby undertakes to immediately inform the Controller if any of the latter's instructions could potentially infringe applicable provisions in data protection matters, under Community or Member State laws.

In the event that the Processor should use the data for another purpose, or reports or uses them in breach of the stipulations of this Agreement, it will also be considered data Controller, and will be personally liable for any infractions it may have incurred, as well as for any loss and damage that the Client may consequently suffer.

#### **Four – Service outsourcing**

The Processor will not outsource all or part of the services covered by this Agreement to another Processor, without the Controller's prior written consent, granted specifically or in general. The Controller hereby consents to the outsourcing of processing to Amazon Web Services EMEA SARL and Acolyte's development partner, NE6 Limited. The Processor will inform the Controller of any change foreseen in the hiring of new processors, or their replacement, thereby granting the latter the chance to challenge any such change.

If the Processor resorts to a sub-processor for the execution of certain processing activities on account of the Controller, always subject to the latter's prior authorisation, the sub-processor will be bound by the same data protection obligations stipulated for the Processor. The Processor will be fully liable vis-à-vis the Controller, and will be liable for effectively complying with data protection obligations on the part of such sub-processor.

Furthermore, the Processor undertakes to inform the Controller of any change foreseen in the hiring of new processors, or their replacement, sufficiently in advance

(10 Business Days) and by authentic means, thus granting the Controller the chance to challenge such changes.

#### **Five – Security measures**

As of 25 May 2018, the Processor will be subject to security measures that are adequate to protect the personal data and other information, to be implemented by the Processor in accordance with the outcome of the risk evaluation completed by the Client, based on the state of the art, application costs, the nature of the data stored, the scope and purposes of the processing, and the risks to which they are exposed. Consequently, the Processor will provide the Client with the necessary information in those cases where its risk analysis indicates that the processing is high-risk, or if so is considered by the Processor.

The Processor will at least provide the Client with the following information, in writing (subject to availability):

- Any security measures implemented.
- Any other information that the UK Information Commissioner may request, held by the Processor.

In any case, the Processor will include the following measures as part of its technical and organisational measures.

#### **Six – Notification of security breaches**

The Processor will be obliged to guarantee implementation of the security requirements foreseen in this Agreement, and to inform the Client without undue delay of any incident affecting any information, documentation and personal data for which the Client is directly or indirectly responsible.

If the Processor or any person involved in the services were to detect an incident entailing data theft, loss or damage, if a person has had unauthorised access thereto, or if the information has been misused, the Processor will immediately get in touch with the Client, providing details of the incident and, in any case, within 40 hours of breach detection, by e-mail to the Client, attaching any relevant information to document and notify the incident, to include at least the following:

1. Description of the nature of the personal data security violation to include, whenever possible, the categories and approximate number of affected parties, and the categories and approximate number of personal data files affected.

2. The name and contact details of the data protection delegate or other contact point where more information may be obtained.
3. Description of any possible consequences.
4. Description of the measures adopted or proposed to remedy the personal data breach to include, if applicable, any measures to mitigate potential negative effects.

If it is not possible to provide the information simultaneously, and insofar as it is not simultaneous, information will be provided gradually and promptly.

The Processor will be responsible for taking any action that may be necessary to contain and resolve the incident.

The Client will conduct a periodic check on the current state of resolution of the incident; the Processor undertakes to respond and provide any reports that may be requested.

## Seven – Record of processing categories

Starting on 25 May 2018 and only in those cases where the Processor has more than two hundred and fifty (250) employees or its processing entails a high risk for the rights of interested parties, or it is processing particularly sensitive data or related to convictions and criminal offences, it will keep a written record of all its processing categories, to include:

- a. Contact details of both the Client and the Processor to include, as the case may be, of its representatives and data protection delegates.
- b. The processing categories completed on behalf of the Client.
- c. A general description of any technical and organisational measures applied.

## Eight – Data subjects' rights

The Processor will assist the controller, by applying any appropriate technical and organisational measures and pursuant to the nature of the processed data, in relation to any requests to uphold the rights of interested parties, to particularly include their rights of access, rectification and cancellation (the “right to be forgotten”), and challenge to the processing of their data, a request for personal data portability, any processing limitations, as well as the right to not be the object of an automated individual decision, profiling included.

In the event that any data subject were to uphold the aforementioned rights vis-à-vis the Processor, the latter will duly notify the situation by e-mail to the Client. This notification must be made immediately and, in any case, no later than by the next business day following receipt of the request, along with any other information that may be relevant to attend the request.

## Nine – Termination

At the end of the contractual service, the Processor undertakes to return any personal data and, as the case may be, any physical media containing the data, once the service is provided. This return will include a total erasure of all data existing in any computer equipment used by the Processor.

Furthermore, the Processor will guarantee that at the end of any contractual relationship held with any person carrying out professional duties:

- such person returns and does not withhold, in any way, the Client's information and resources.
- the foregoing is confirmed in a handwritten document or through any similar means permitted by current law.
- all authorisations to data processes are immediately cancelled.

Without prejudice to the foregoing, the Processor may keep a copy, with all data duly removed, insofar as it remains liable for performance of the services.

## Ten – Audits

The Client, further to its controlling capacity, may carry out its own check-ups, in order to verify compliance with the security policies and measures required in this Agreement to protect personal information and data. These checks may be conducted on data systems and data processing facilities of the Processor, or may involve the gathering of information to corroborate the Processor's compliance. In any case, the Processor will keep documentation available to the Client (in printed or electronic form), confirming compliance with its obligations under the Agreement.

In order to facilitate or even avoid the Client's verification, the Processor may provide certifications, whose scope of application includes the services and staff offered by the latter to the Client. The foregoing will apply without prejudice to the possibility of completing any other audits or checks in order to verify other obligations foreseen in this Agreement.

### **Eleven – Duty of care**

The Processor undertakes to provide to the Controller any information that may be necessary to evidence compliance with its obligations, and will inform the Processor in relation to its adherence to an approved code of conduct, or its subscription of any certification system that is able to guarantee compliance with its personal data processing obligations.

Any persons carrying out professional tasks for the Processor must be aware of the importance of the Client's information, will process it safely and will be trained and qualified for each and every one of the data processing stages, for each and every task performed. Such persons will take the necessary care and will adopt adequate measures to protect the data processing, further to their contractually binding duty of good faith.

### **Twelve – Duty of information**

The personal data of the Processor's representatives or contacts will, in turn, be processed by the Client, acting as the Controller, in order to manage the relationship held with the latter, as the Processor, based on the rendering of services; the controller has a legitimate interest in recording any phone conversations maintained between the parties and the data subject may as well exercise the rights of access, rectification, cancellation and challenge, may limit processing and portability, and may decide not to be the object of automated individualised decisions, by addressing the Data Protection Delegate at the foregoing address, referring to "DP" on the envelope, or by sending an e-mail to [dataprotectionofficer@acolytegroup.co.uk](mailto:dataprotectionofficer@acolytegroup.co.uk). If intended, the data subject may as well file a claim before the data protection Authority.



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