AMBERJACK STANDARD TERMS AND CONDITIONS - TECHNOLOGY AND SERVICES

THIS AMBERJACK CLIENT SERVICES AGREEMENT is dated xxxxxxxxxx entered into **BETWEEN**:

1) **AMBERJACK GLOBAL LIMITED**, a company incorporated in England and Wales with company no. 03907607, whose registered office is at Newbury House, 20 Kings Road West, Newbury, Berkshire, RG14 5XR, United Kingdom ("**Amberjack**"),

   and

2) **XXXXXXXXX**, a company incorporated in xxxxxxxxxx with company no. [insert company number], whose registered office is at [insert registered office address] (the "**Client**");

each a "**Party**" and collectively the "**Parties**".

The Parties hereby agree as follows:

1) The Client wishes to engage Amberjack and Amberjack wishes to provide the Technology Solution and Services as described in this Agreement.

2) This Agreement consists of :
   i. This Agreement signature page;
   ii. Amberjack Standard Terms and Conditions attached; and
   iii. Schedule of services (Statement of Work) attached.

SIGNED for and on behalf of the Client	**SIGNED for and on behalf of AMBERJACK**
……	……
Name: ……	**Name:** ……
Title: ……	**Title:** ……
Date: ……	**Date:** ……

AMBERJACK STANDARD TERMS AND CONDITIONS

AGREEMENT:

1. DEFINITIONS

1.1 Except to the extent expressly provided otherwise, in this Agreement:

"**Affiliate**" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"**Agreement**" means this agreement, including any Schedules;

"**Amberjack Personnel**" means Amberjack's employees and Associates;

"**Amberjack Technology Solution**" means a software-based solution developed and owned by Amberjack for the whole or individual management of a recruitment process or assessment & selection process, including Ambertrack, Amberjack Assessment Platform, Amberchat, TalentSee, Leap, HiPo-i and imPact and other software-based solutions that Amberjack may develop from time to time, as identified in the Services Schedule;

"**Approved Sub-contractor**" means a service provider suggested by Amberjack and approved by the Client to provide elements of the Services, as specified in the Services Schedule;

"**Associate**" means a contractor engaged by Amberjack to provide elements of the Services, including but not limited to screening, interviewing, assessing and design;

"**Business Day**" means a day other than a Saturday, Sunday or bank or public holiday in England;

"**Business Hours**" means the hours of 09:00 to 17:30 GMT/BST on a Business Day;

"**Candidates**" means individuals who apply for jobs with the Client or the Client's Affiliates via the Services;

"**Candidate Data**" means information in any form relating to Candidates, whether submitted by Candidates to the Amberjack System or Client System or otherwise provided or made available by Candidates to Amberjack or the Client in connection with the Services, or generated by Amberjack or the Client in the course of the performance of the Services;

"**Client Data**" means all data, works and materials of the Client that are provided or made available by the Client to Amberjack in connection with the Services, and does not include Candidate Data;

"**Client System**" means any hardware and software system of the Client that the Client instructs Amberjack to use for the provision of the Services, as set out in the Services Schedule;

"**Confidential Information**" means (i) any information disclosed by or on behalf of one Party to the other Party at any time before the termination or expiry of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been reasonably understood by the other Party to be confidential (including without limitation information relating to the Services to be provided under this Agreement and the business affairs, commercial and marketing activities, transactions, finances, know-how and trade secrets of either Party; (ii) in the case of Amberjack, the Amberjack Technology Solution (excluding the Client Data and Candidate Data); (iii) in the case of the Client, the Client Data and the Client System (excluding the Candidate Data); and (v) in either case, the terms of this Agreement;

"**Control**" means the legal power to control (directly or indirectly) the management of an entity (and "**Controlled**" should be construed accordingly);

"**Data Disposal Procedure**" means the data disposal procedure implemented by Amberjack as set out in the Agreement;

"**Data Protection Law"/ "Data Protection Legislation**" means, as applicable:

a) the UK Data Protection Act 2018;

b) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data including the recitals (**GDPR**); and

c) the GDPR as it applies in the UK by virtue of section 3 of the European Union (Withdrawal) Act 2018 (known as UK GDPR); and

d) all other applicable laws (including judgments of any relevant court of law and where applicable, the guidance and codes of practice issued by the relevant data protection regulator) and regulations relating to the processing of personal data, data privacy, electronic communications, marketing and/or data security,

in each case as amended, extended or re-enacted from time to time,
and **controller**, **processor**, **data subject**, **processing**, **personal data** and **personal data breach** shall have the same meanings as defined in Data Protection Laws.

"Effective Date" means the date of the last signature to this Agreement;

"**Fees**" means the charges and expenses payable by the Client to Amberjack, as set out in the Services Schedule or as varied in accordance with this Agreement;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the Party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Schedule**" means any schedule attached to the main body of this Agreement;

"**Services**" means the services and/or solutions to be provided to the Client under this Agreement, as set out in the Services Schedule / Statement of Work (SOW);

"**Services Schedule**" / "**Statement of Work"** means Schedule 1, which sets out the details of, and Fees payable in respect of, the Services;

"**Support Services**" means support in relation to the use of, and the identification and resolution of errors in, the Amberjack Technology Solution, as set out in the Services Schedule/Statement of Work;

"**Term**" means the duration of this Agreement as specified in Clause 2.1;

"**Third Party Services**" means any services provided by any third party that the Client instructs Amberjack to use to provide the Services, as set out in the Services Schedule;

"**Work**" means any assessment materials specifically commissioned by the Client and produced by Amberjack or by Amberjack Personnel in the course of performing the Services and delivered to the Client as part of the Services.

1.2 In this Agreement:

a) a reference to a statute or statutory provision includes a reference to that statute or statutory provision as modified, consolidated and/or re-enacted from time to time and any subordinate legislation made under that statute or statutory provision;

b) the Clause headings do not affect the interpretation of this Agreement;

c) general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

2. TERM

2.1 This Agreement shall come into force on the Effective Date and shall, unless terminated earlier in accordance with any provision of this Agreement, continue in force for three years (Initial Period) from the Effective Date and will from the end of the Initial Period automatically renew for successive one-year terms, unless either Party provides at least three months prior written notice of non-renewal for the termination to the other Party to take effect at the anniversary of Effective Date.

3. PROVISION OF THE SERVICES

3.1 Amberjack shall provide the Services to the Client during the Term:

a) in accordance with this Agreement and any specifications set out in the Services Schedule/Statement of Work. Additional Service Schedule may be added by agreement between the parties as required;

b) using reasonable skill, care and diligence;

c) in accordance with all applicable laws;

d) having obtained any consents and licences which are necessary to enable Amberjack to provide the Services and in accordance with such consents and licences;

4. ACCESS TO AND USE OF AMBERJACK TECHNOLOGY SOLUTION AND SERVICES

4.1 Amberjack shall create an account for the Client and provide the Client with login details for that account.

4.2 Amberjack hereby grants to the Client a worldwide, non-exclusive, non-transferable, revocable licence to use the Amberjack Technology Solution via a web-based app in accordance with any instructions or documentation provided by Amberjack for the purpose of and to the extent required for the Client to receive the Services as set out in the Services Schedule.

4.3 The Client shall not:

a) sub-license its right to access and use the Amberjack Technology Solution;

b) permit any unauthorised person to access or use the Amberjack Technology Solution;

c) use the Amberjack Technology Solution to provide services to third parties;

d) republish or redistribute any content or material from the Amberjack Technolgy Solution;

e) use the Amberjack Technology Solution in any way that causes, or may cause, damage to the Amberjack Technology Solution or impairment of the availability or accessibility of the Amberjack Technology Solution;

f) use the Amberjack Technology Solution in any way that is unlawful, illegal, fraudulent or harmful or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity;

g) access or attempt to access the software code (including object code, intermediate code and source code) of the Amberjack Technology Solution or

h) make any alteration to the Amberjack Technology Solution.

4.4 The Client shall use reasonable endeavours, including reasonable security measures relating to account access details, to ensure that no unauthorised person gains access to the Amberjack Technology Solution or to the Client System.

4.5 If Amberjack reasonably determines, or any third party alleges, that the use of the Amberjack Technology Solution by the Client in accordance with this Agreement infringes any person's Intellectual Property Rights, Amberjack may at its own cost and expense either:

a) modify the Amberjack Technology Solution in such a way that it no longer infringes the relevant Intellectual Property Rights; or

b) procure for the Client the right to use the Amberjack Technology System in accordance with this Agreement.

4.6 Where the Services are to be provided using the Amberjack Technology Solution, the Client shall, upon Amberjack's request, provide to Amberjack, or procure for Amberjack, such access to the Client's computer hardware, software, networks and systems as may be reasonably required by Amberjack to enable Amberjack to make the Amberjack Technology Solution accessible and usable by the Client in accordance with this Agreement.

4.7 Amberjack shall comply with any instructions and/or policies of the Client in relation to access to and use of the Client System that are notified to Amberjack and referred to in the Services Schedule, and must ensure that all persons using the Client System with the authority of Amberjack comply with such instructions and policies.

4.8 Amberjack shall provide the Support Services to the Client if requested during the Term with reasonable skill and care and in accordance with any specifications or service levels set out in the Services Schedule.

4.9 Amberjack delivers Human controlled, AI augmented video/CV screening and chat technology that always allows our staff to control, calibrate and review any scoring or communication that has been generated via our secure/private AI engines. This hybrid approach means results exceed that of pure human scoring or communication, allowing greater accuracy, more report detail, with greater speed, alongside a better overall candidate experience - with everything always subject to our normal Human Quality Assurance checks/audits.

5. CLIENT OBLIGATIONS

5.1 The Client shall, upon Amberjack's request, provide to Amberjack or procure for Amberjack within a reasonable time, such co-operation, support and advice, information and documentation, personnel assistance and governmental, legal and regulatory licences, consents and permits as are reasonably necessary to enable Amberjack to perform its obligations under this Agreement.

5.2 The Client acknowledges that a delay in the Client performing its obligations in this Agreement may result in a delay in the provision of the Services; and Amberjack will not be liable to the Client in respect of any delay or failure to provide the Services in accordance with this Agreement to the extent that that failure arises out of a delay in the Client performing its obligations under this Agreement.

6. CLIENT DATA

6.1 The Client hereby grants to Amberjack a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Client Data to the extent reasonably required for the performance of Amberjack's obligations and the exercise of Amberjack's rights under this Agreement, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of Amberjack's obligations and the exercise of Amberjack's rights under this Agreement.

6.2 The Client shall have sole responsibility for the reliability, integrity, accuracy and quality of the Client Data.

6.3 The Client warrants to Amberjack that the Client Data when used by Amberjack in accordance with this Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

7. USE OF THIRD PARTY SERVICES

7.1 This Clause shall apply where the Client instructs Amberjack to use specified Third Party Services to provide any of the Services.

7.2 The Client acknowledges that:

7.3 the use of Third Party Services may entail the transfer of Client Data and Candidate Data to Third Party Services providers; and

7.4 Amberjack has no control over, or responsibility in respect of, Third Party Services providers' use of Client Data or Candidate Data.

7.5 The Client hereby consents to the disclosure and transfer of Client Data and Candidate Data to Third Party Services provider(s) as may be reasonably necessary to enable Amberjack to perform its obligations under this Agreement.

7.6 The Client warrants to Amberjack that the disclosure and transfer of Client Data and Candidate Data by Amberjack to a provider of Third Party Services will not infringe any person's legal or contractual rights and will not cause Amberjack to breach any applicable laws.

7.7 Amberjack shall not be liable to the Client in respect of any loss or damage that may be caused by any Third Party Services or by the acts or omissions of any Third Party Services provider.

7.8 Amberjack gives no warranties or representations in respect of any Third Party Services.

7.9 Additional Fees may be payable by the Client to Amberjack in respect of the use of Third Party Services, as set out in the Services Schedule.

8. CHANGE REQUEST PROCEDURE

8.1 If either Party requests a change to the Services during the Term, the Party requesting the change shall give written notice of the requested change to the other Party (a "Change Notice") setting out as a minimum:

a) details of the impact of the change on the Services;

b) details of any additional resources expected to be required as a result of the change; and

c) details of any variation to the Fees consequent upon the change.

8.2 The other Party will consider any proposed change within 10 Business Days of its receipt of the Change Notice.

a) Either Party who receives a Change Notice from the other Party may: accept or reject the Change Notice;

b) request further information concerning the Change Notice; and/or

c) request amendments to a Change Notice.

8.3 Following agreement of a Change Notice, each Party will confirm its agreement by signing a copy of the Change Notice and sending the signed Change Notice to the other Party or otherwise sending its written acceptance of the Change Notice to the other Party.

8.4 No proposed change will take effect until a Change Notice recording that change has been signed or agreed in writing by each Party.

9. FEES AND PAYMENT

9.1 Amberjack shall issue invoices for the Fees to the Client in accordance with the schedule set out in the Services Schedule.

9.2 The Client shall pay the Fees to Amberjack within 30 days of the relevant invoice date.

9.3 All payments due to Amberjack under this Agreement shall be paid in GB Pounds Sterling by BACS payment or such other method as may be agreed in writing to the account notified on the relevant invoice.

9.4 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and be payable by the Client to Amberjack.

9.5 The Fees shall increase each year on the anniversary of the Effective Date by annual Retail Price Index as released by the UK Office for National Statistics.

9.6 If the Client disputes in good faith any portion of the Fees included in an invoice, then:

a) the Client shall pay the undisputed amount in accordance with the preceding sub-clauses;

b) the Parties shall attempt to resolve the dispute in accordance with the dispute resolution procedure set out in this Agreement;

c) the Client shall pay any amount agreed to be payable pursuant to the dispute resolution procedure to Amberjack plus interest at the rate of 6% above the Bank of Enlgland base rate applicable from time to time (which interest will accrue daily from the date such amount was originally due until the date of actual payment and be compounded at the end of each calendar month).

9.7 If the Client does not pay any amount properly due to Amberjack under this Agreement, Amberjack may charge the Client interest on the overdue amount at the rate of 6% above the Bank of England base rate applicable from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month).

9.8 Prior to start of delivering the work, and on an annual basis, there is a requirement for Amberjack to set-up your new infrastructure, implement any design changes for the new season, connect your tech installation to our live environment, and configure the Amberjack hiring platform in line with the agreed approach for the renewed campaign. Typically, this will take place up to 4 months in advance of the new season (Sept each year) or campaign kick-off Internally, Amberjack will associate a percentage of your total fees with this annual set-up/implementation/connection requirement, but it will not change the total price to you (the client) in line with your current contract, and your standard invoicing schedule that is already agreed remains unchanged. To be clear there is no change to the price to you, this is an internal accounting principle used at Amberjack to align with when project preparation work is being done.

10. CONFIDENTIALITY

10.1 Each Party shall:

a) keep the other Party's Confidential Information strictly confidential;

b) not disclose the other Party's Confidential Information to any person without the other Party's prior written consent, which consent may be subject to any conditions of confidentiality specified by the other Party;

c) use the same degree of care to protect the confidentiality of the other Party's Confidential Information as it uses to protect its own confidential information of a similar nature, being at least a reasonable degree of care;

d) act in good faith at all times in relation to the other Party's Confidential Information; and

e) not use any of the other Party's Confidential Information for any purpose other than the performance of its obligations under this Agreement or receiving the Services.

10.2 Notwithstanding this , a Party's Confidential Information may be disclosed by the other Party to that other Party's officers, employees, professional advisers, insurers, agents and subcontractors (including Associates in the case of Amberjack) who need to access the Confidential Information in order to perform their work in connection with the provision of the Services or to enforce the rights and obligations under this Agreement (or advise on such rights and obligations) and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed.

10.3 No obligations are imposed by this Clause with respect to a Party's Confidential Information if that Confidential Information:

a) is known to the other Party before disclosure under or in connection with this Agreement and is not subject to any other obligation of confidentiality;

b) is or becomes publicly known other than as a result of breach of this Agreement or any act or default of the other Party; or

c) is obtained by the other Party from a third party in circumstances where the other Party has no reason to believe that there has been a breach of an obligation of confidentiality; or

d) which the other Party can show by its written or other records was independently developed by the receiving Party without access to the Confidential Information.

10.4 The restrictions in this Clause do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either Party on any recognised stock exchange.

10.5 Upon the termination or expiry of this Agreement, each Party must immediately cease to use the other Party's Confidential Information.

10.6 Subject to other terms in this Agreement, within 30 Business Days of the termination or expiry of this Agreement, each Party must destroy or return to the other Party (at the other Party's option) all media containing the other Party's Confidential Information, and must irrevocably delete the other Party's Confidential Information from its computer systems.

10.7 Amberjack shall return and destroy the Client Data and Candidate Data in accordance with the Data Disposal Procedure, unless a different procedure is specified in the Services Schedule, in which case Amberjack will act in accordance with the procedure set out in the Services Schedule.

10.8 Where the Client System is used to provide the Services, the Client shall be solely responsible for the destruction of Client Data and Candidate Data stored in the Client System.

10.9 The provisions of this Clause shall continue for a period of 2 years following the termination of this Agreement, at the end of which period they will cease to have effect.

11. PUBLICITY

11.1 Neither Party may make any public disclosures relating to this Agreement or the subject matter of this Agreement (including disclosures in press releases, public announcements and marketing materials) without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 The Intellectual Property Rights in the Amberjack Technology Solution and in the recruitment process methods, techniques and tools used in the course of Amberjack's business generally shall remain owned by Amberjack.

12.2 The Intellectual Property Rights in the Client Data shall remain owned by the Client.

12.3 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from Amberjack to the Client, or from the Client to Amberjack, except as expressly set out in this Agreement.

12.4 Neither Party shall have any rights to use the other Party's Intellectual Property Rights except as expressly set out in this Agreement.

12.5 Subject to this Clause, the Client shall own any Intellectual Property Rights in and to the Work.

13. DATA PROTECTION

13.1 Each party shall comply with its obligations under Data Protection Legislation in respect of personal data processed by it in connection with this Agreement and the Services ("Personal Data").

13.2 The Amberjack shall act as a processor of The Client in respect of the Personal Data. Nothing in this Clause relieves Amberjack of its own obligations as processor under the Data Protection Legislation.

13.3 The Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Amberjack and/or lawful collection or use of the Personal Data by Amberjack on behalf of the Client for the duration and purposes of this agreement. Purpose of handling Personal Data by Amberjack is to assist the Client in recruitment of Candidates. The types of Personal data to be processed may include name, contact details (including phone number, email and postal address), date of birth, educational and employment history, skills and qualifications, information relating to criminal records, ethnicity, nationality, health and disability, other information relevant to the assessment and evaluation of Candidates, and information provided in order to submit applications using the Amberjack Technology Solution or Client System, such as usernames and passwords used to register and login to the relevant system.

13.4 In processing the Personal Data, Amberjack shall:

a) only process Personal Data: (a)to the extent necessary to provide the Services; (b) in accordance with the specific instructions of The Client (save to the extent such instructions infringe the Data Protection Legislation, in which case Amberjack shall notify The Client); or (c) as required by any regulator or applicable law;

b) not disclose any Personal Data to any third party (excluding Amberjack' sub-contractors), without the Client's prior written consent, other than to the extent required by any competent authority or applicable law in which case Amberjack shall inform the Client of such required disclosure prior to processing such disclosure unless prevented from doing so pursuant to applicable law;

c) implement appropriate technical and organisational measures to maintain the security of such Personal Data and prevent unauthorised or unlawful access to, or processing of, or any accidental loss, destruction or damage to that Personal Data;

d) keep, and procure that all of its employees and agents keep, the Personal Data confidential in accordance with Amberjack' confidentiality obligations;

e) maintain a record of its processing activities and provide all cooperation and information to The Client as is reasonably necessary for The Client to demonstrate compliance with its obligations pursuant to Data Protection Legislation, including permitting audits conducted by or on behalf of The Client or its regulators on reasonable notice from time to time;

f) notify The Client in writing without undue delay and in any event within 24 hours of discovery of, and provide full cooperation in the event of, any breach of security

leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data in Amberjack' possession or control;

g) provide full cooperation and assistance to The Client in relation to any request by a data subject to have access to Personal Data held about them or in relation to any other request, allegation or complaint by a competent authority or data subject, including notifying The Client in writing without undue delay of receipt of any such notice or request;

h) at the choice of The Client, delete or return all Personal Data to The Client on termination or expiry of this Agreement, and delete all copies of the Personal Data (save to the extent that retention of copies is required by applicable law) providing written confirmation of such deletion to The Client;

i) not transfer Personal Data outside the United Kingdom, European Economic Area ("EEA") or a country not deemed data adequate under the UK Data Adequacy Regulations. If Amberjack transfers Personal Data outside the United Kingdom, EEA or a country not deemed to provide an adequate level of protection for personal data that Amberjack shall:

enter into a data transfer agreement in a form prescribed by applicable Data Protection Legislation, to the extent that the formalisation of such a document represents a valid means of transferring Personal Data outside of the United Kingdom, EEA or relevant jurisdiction; or

otherwise ensure that the transfer is subject to terms which satisfy the Data Protection Legislation including the conditions of any applicable adequacy finding or decision.

13.5 Where a sub-processor is duly engaged to carry out specific processing activities on behalf of The Client, Amberjack shall ensure that it enters into a written contract with such sub-processor containing data protection obligations no less onerous than those set out in this Clause which shall apply to the sub-processor.

13.6 Data disposal Procedure:

System Data (Data that is held within an Amberjack Technology Solution and hosted by Amberjack);

- Once a campaign has been completed Amberjack will store System Data related to the campaign for a period of 12 months (the "**Storage Period**").
- During the Storage Period, Amberjack will produce anonymised, aggregated data from the System Data related to the campaign for the purposes of cross campaign analysis of specific trends.
- During the Storage Period, if the Client has so requested, Amberjack will provide a copy of the System Data related to the campaign to the Client using a commonly used format. This provision of such System Data will be subject to the Client paying additional fees, which will be notified to the Client upon

request and vary depending on the method of provision chosen by the Client and the amount of data. At the end of the Storage Period, Amberjack will delete all System Data related to the campaign.

Local Data (Data that is held by Amberjack only in local documentary form, such as documents downloaded to Amberjack's or Associates' computers and laptops, printed paper documents and handwritten notes).

- Amberjack will retain Local Data related to the campaign for the Storage Period and delete/destroy all such Local Data at the end of the Storage Period. Amberjack will not provide Local Data to the Client.

14. WARRANTIES

14.1 Each Party warrants to the other that:

a) it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement; and

b) it will comply with all applicable legal and regulatory requirements applying to the exercise of its rights and the fulfilment of its obligations under this Agreement.

14.2 Where the Services are to be provided using the Amberjack Technology Solution Only or Amberjack Technology Solution and outsourcing process, Amberjack warrants to the Client that:

a) the Amberjack Technology Solution will conform in all material respects with any specification set out in the Services Schedule;

b) the Amberjack Technology Solution will incorporate security features reflecting the requirements of good industry practice;

c) the Amberjack Technology Solution, when used by the Client in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

14.3 Where the Services are to be provided using outsourcing process, the Client warrants to Amberjack that:

a) the Client System will incorporate security features reflecting the requirements of good industry practice;

b) the Client System, when used by Amberjack in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

14.4 All of the Parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

15. ACKNOWLEDGEMENTS AND WARRANTY LIMITATIONS

15.1 The Parties acknowledge that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, Amberjack gives no warranty or representation that the Amberjack Technology Solution will be wholly free from defects, errors and bugs and the Client gives no warranty or representation that the Client System will be wholly free from defects, errors and bugs.

15.2 The Parties acknowledge that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, Amberjack gives no warranty or representation that the Amberjack Technology Solution will be completely secure and the Client gives no warranty or representation that the Client System will be completely secure.

15.3 The Client acknowledges that the Amberjack Technology Solution is designed to be compatible only with that software and those systems specified as compatible in the Services Schedule; and Amberjack does not warrant or represent that the Amberjack Technology Solution will be compatible with any other software or systems.

15.4 The Client acknowledges that Amberjack will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Amberjack Technology Solution; and, except to the extent expressly provided otherwise in this Agreement, Amberjack does not warrant or represent that the Amberjack Technology Solution or the use of the Amberjack Technology Solution by the Client will not give rise to any legal liability on the part of the Client or any other person.

15.5 Amberjack shall not be responsible for, or in respect of:

a) any use of the Amberjack Technology Solution contrary to Amberjack's instructions or any documentation provided to the Client in relation to use of the Amberjack Technology Solution;

b) any modification or alteration of the Amberjack Technology Solution by any person other than Amberjack or Amberjack's duly authorised contractors or agents;

c) any issues affecting the internet which are outside of Amberjack's control;

d) and denial of service attacks affecting Amberjack;

e) any inaccuracies or omissions in the Client Data; or

f) any failure by the Client to comply with the requirements of this Agreement.

16. INDEMNITIES

16.1 Amberjack shall, subject to Clause 17.6, indemnify and shall keep indemnified the Client against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Client and arising directly or indirectly as a result of any claim made by a third party that the Client's use of the Amberjack Technology Solution in accordance with this Agreement infringes the intellectual property rights or other rights of any third party (an "**Amberjack Indemnity Event**").

16.2 The Client shall indemnify and shall keep indemnified Amberjack against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by Amberjack and arising directly or indirectly as a result of:

a) any claim made by a third party that Amberjack's use of the Client System in accordance with this Agreement infringes the Intellectual Property Rights or other rights of any third party; or

b) any use of Third Party Services as instructed by the Client and in accordance with this Agreement,

(a "**Client Indemnity Event**").

16.3 The obligation on one Party (the "**Indemnifying Party**") to indemnify the other Party (the "**Indemnified Party**") pursuant to an Amberjack Indemnity Event or a Client Indemnity Event, as the case may be, (each an "**Indemnity Event**") shall be conditional upon the Indemnified Party:

a) notifying the Indemnifying Party upon becoming aware of an actual or potential Indemnity Event;

b) providing to the Indemnifying Party all such assistance as may be reasonably requested by the Indemnifying Party in relation to the Indemnity Event;

c) allowing the Indemnifying Party the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Indemnity Event; and

d) not admitting liability to any third party in connection with the Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Indemnity Event without the prior written consent of the Indemnifying Party.

16.4 The indemnity protection set out in this Clause shall be subject to the limitations and exclusions of liability set out in this Agreement.

17. LIMITATIONS AND EXCLUSIONS OF LIABILITY

17.1 Nothing in this Agreement will limit or exclude any liability for death or personal injury resulting from negligence, for fraud or fraudulent misrepresentation or any other kind of liability that under applicable law cannot be limited or excluded.

17.2 The limitations and exclusions of liability set out in this Clause and elsewhere in this Agreement:

a) are subject to the preceeding Clause; and

b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

17.3 Neither Party shall be liable to the other Party in respect of any losses arising out of a Force Majeure Event, any loss of profits, revenue, income, anticipated savings, use or production, business, contracts or opportunities, or any special, indirect or consequential loss or damage.

17.4 Neither Party shall be liable to the other Party in respect of any loss or corruption of any data, database or software, except that this exclusion of liability, subject to Clause 17.6, shall not apply where such loss or corruption arises from a breach of a Party's obligations under the Data Protection Clause (Clause 13).

17.5 Amberjack shall not be liable to the Client in respect of any loss or damage arising out of:

a) Amberjack's use of Third Party Services as instructed by the Client and in accordance with this Agreement;

b) the acts or omissions of any Third Party Services provider;

c) the acts or omissions of any third party in connection with use of the Client System;

d) the Client's failure to perform any of its obligations under this Agreement; or

17.6 The maximum aggregate liability of Amberjack to the Client under this Agreement shall not exceed:

a) subject to sub-Clause (b) of this Clause, an amount equivalent to the total amount paid by the Client to Amberjack under this Agreement in the 12 month period preceding the commencement of the event or events giving rise to the liability in question;

b) in respect of any liability due to any breach of Clauses covering Intellectual Property, Confidentiality or Data Processing £1,000,000.

18. FORCE MAJEURE EVENT

18.1 If a Force Majeure Event gives rise to a failure or delay in either Party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

18.2 A Party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that Party performing any obligation under this Agreement, must:

a) promptly notify the other; and

b) inform the other of the period for which it is estimated that such failure or delay will continue.

18.3 A Party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

19. TERMINATION

19.1 Either Party may terminate this Agreement immediately by giving written notice of termination to the other Party if:

19.2 the other Party commits any material breach of this Agreement, and the breach is not remediable:

a) the other Party commits a material breach of this Agreement, and the breach is remediable but the other Party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other Party requiring the breach to be remedied;

b) the other Party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach);

c) a Force Majeure Event lasts for more than 3 months from the date of the notification.

19.3 Either Party may terminate this Agreement immediately by giving written notice of termination to the other Party if the other Party is dissolved; ceases to conduct all (or substantially all) of its business; is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, convenes a meeting or makes or proposes to make any arrangement or composition with its creditors, an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other Party; or an order is made for the winding up of the other Party, or the other Party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement).

19.4 Amberjack may terminate this Agreement immediately by giving written notice to the Client if:

a) any amount due to be paid by the Client to Amberjack under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and

b) Amberjack has given to the Client at least 30 days' written notice, following the failure to pay by the Client, of its intention to terminate this Agreement.

20. EFFECTS OF TERMINATION

20.1 Except to the extent that this Agreement expressly provides otherwise, the termination or expiry of this Agreement shall not affect the accrued rights of either Party.

20.2 Following the expiry or termination of this Agreement for any reason:

(1) without prejudice to the Parties' other legal rights the Client must pay to Amberjack any Fees in respect of Services provided to the Client before the expiry or termination of this Agreement;

(2) all licences granted under this Agreement shall terminate immediately, and accordingly the Client must immediately cease use of the Amberjack Technology Solution and Amberjack must immediately cease use of the Client System and Client Data;

(3) Amberjack shall return or delete any Client Data and Candidate Data in its possession and control in accordance with the Data Disposal Procedure, unless a different

procedure is specified in the Services Schedule, in which case Amberjack will comply with the procedure set out in the Services Schedule.

21. DISPUTE RESOLUTION

21.1 If a dispute arises between the Parties concerning this Agreement, each of the Parties will, in the first instance, use reasonable endeavours to resolve the dispute in good faith through discussion between representatives of each Party. If such attempt is not successful, the Parties will escalate the dispute within their organisations to a senior executive, and the senior executives of each Party will discuss the disputed matter and use reasonable endeavours to reach agreement.

21.2 If a dispute cannot be resolved in accordance with the preceding Clause within twenty (20) Business Days of escalation to such senior executives by both Parties, either Party shall be entitled to initiate legal proceedings.

22. NOTICES

22.1 Any notice given under this Agreement must be in writing, whether or not described as "written notice" in this Agreement.

22.2 Any notice given by one Party to the other under this Agreement must be given using the relevant contact addresses set out in the Services Schedule.

22.3 The addressee and contact details set out in the Services Schedule may be updated from time to time by a Party giving written notice of the update to the other Party.

22.4 A Party receiving from the other Party a notice by email must acknowledge receipt by email promptly, and in any event within 2 Business Days following receipt of the notice.

22.5 A notice will be deemed to have been received at the relevant time set out below or, where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below:

a) in the case of notices delivered personally, upon delivery;

b) in the case of notices sent by courier, upon delivery;

in the case of notices sent by post, 48 hours after posting; and

c) in the case of notices sent by email, at the time of the sending of the email (providing that the sending party retains written evidence that the email has been sent).

23. ASSIGNMENT

23.1 Neither Party may assign, transfer or otherwise deal with its contractual rights and/or obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed, providing that Amberjack may assign the entirety of its rights and obligations under this Agreement to any Affiliate of Amberjack or to any successor to all or a substantial part of the business of Amberjack from time to time.

24. SOLICITATION AND HIRING

24.1 For the duration of this Agreement and for twelve months after the termination or expiry of the Agreement (the Prohibited Period), neither party will directly or indirectly solicit for employment any of the other party's personnel who are or were directly involved in the provision or receipt of the Services. This does not restrict either party from employing staff who make an unsolicited employment application in response to a general recruitment advertisement or campaign. However, the parties realise that there are costs involved in any recruitment and therefore the employing party, if it employs an employee of the other party during this Prohibited Period, whatever the mode of recruitment, the employing party agrees to pay 25% of the employee's new annual salary as a replacement recruitment fee to the other party.

25. GENERAL

25.1 **No waivers**: No breach of any provision of this Agreement will be waived except with the express written consent of the Party not in breach. No waiver of any breach of any provision of this Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of this Agreement.

25.2 **Severability**: If a provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect. If any unlawful and/or unenforceable provision of this Agreement would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

25.3 **Third party rights**: This Agreement is for the benefit of the Parties, and is not intended to benefit or be enforceable by any third party. The exercise of the Parties' rights under this Agreement is not subject to the consent of any third party.

25.4 **Variation**: This Agreement may not be varied except by means of a written document signed by or on behalf of each Party, without prejudice to the requirements of Clause 8.

25.5 **Entire agreement**: The main body of this Agreement and the Schedules (including the appendices to the Schedules) shall constitute the entire agreement between the Parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the Parties.

25.6 **Law and jurisdiction**: This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Any disputes relating to this Agreement shall be subject to the exclusive jurisdiction of the courts of England.

SCHEDULE 1 - SERVICES SCHEDULE / STATEMENT OF WORK (SOW)