

Amberjack  
and  
*(insert client name)*

# AMBERJACK SERVICES AGREEMENT

THIS AGREEMENT is made on [insert date] 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) [INSERT COMPANY NAME [LTD][LIMITED]], a company incorporated in England and Wales with company no. [insert company number], whose registered office is at [insert registered office address] (the "**Client**");
- each a "**Party**" and collectively the "**Parties**".

## BACKGROUND

- 1) Amberjack is a specialist provider of future talent and volume recruitment outsourcing, technology, assessment, design and consulting solutions.
- 2) The Client wishes Amberjack to provide certain recruitment-related services and/or solutions to the Client.
- 3) Amberjack and the Client therefore wish to enter into a contract for the provision of such services in accordance with the provisions of this Agreement.

## 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 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 Schedule 2;

**"Data Processing Schedule"** means Schedule 3, which sets out provisions relating to the Processing of Personal Data in connection with this Agreement;

**"Data Protection Legislation"** has the meaning given to it in the Data Processing Schedule;

**"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, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Personal Data"** has the meaning given to it in the Data Processing Schedule;

**"Processing"** has the meaning given to it in the Data Processing Schedule;

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

**"Service Levels"** means the levels of service as set out in the Services Schedule;

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

**"Services Schedule"** 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;

**"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) a reference to a Paragraph means a paragraph of a Schedule;
- d) 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 Clause 21 or any other provision of this Agreement, continue in force until each Party has performed its obligations under this Agreement.

## 3. PROVISION OF THE SERVICES

- 3.1 The Services will be provided using one of the following delivery models:
  - a) **Amberjack Technology SolutionOnly:** Amberjack prepares the technology solution/s in accordance with the Client's instructions and delivers the technology solution to the Client to be used directly by the Client's staff. Amberjack provides technical support in the form of the Support Services. The Amberjack Technology Solution and the Client Data and Candidate Data are stored on Amberjack's servers and the Client accesses the Amberjack Technology Solution via a web-based app.

- b) **Amberjack Technology Solution and RPO:** Amberjack prepares the Amberjack Technology Solution in accordance with the Client's instructions. Amberjack Personnel perform the Services using the Amberjack Technology Solution until the assessment centre stage of the assessment process. Amberjack employees have full admin rights, Associates have limited visibility of Client Data and Candidate Data and no admin rights, and the Client has read-only access to the Amberjack Technology Solution. The Amberjack Technology Solution and the data are stored on Amberjack's UK-based servers and the Amberjack Personnel and the Client access the Amberjack Technology Solution via a web-based app.
- c) **RPO Only:** The Client System is prepared by the Client or on behalf of the Client by a third party provider. The Client or third party provider provide technical support. The Client and third party provider have access to the Client System according to the Client's specifications. Amberjack Personnel have access to the Client System via a web-based app, with access levels in accordance with the Client's specifications. The Client has full admin rights access to the Client System. Amberjack is not aware where the data is stored.
- d) **Consulting Solutions:** Amberjack provides consulting to help clients improve recruitment performance and efficiency, advising on assessment process design, programme design and technology solutions and providing advice and guidance on specific business objectives such as diversity.

3.2 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;
- 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;
- e) in accordance with the Service Levels.

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

- 4.1 This Clause 4 shall apply where the Services Schedule states that the Services are to be provided using the Amberjack Technology Solution Only or Amberjack Technology Solution and RPO delivery model.
- 4.2 Amberjack shall create an account for the Client and provide the Client with login details for that account.
- 4.3 Amberjack hereby grants to the Client a worldwide, non-exclusive 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.
- 4.4 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 Technology 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.
- 4.5 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.
- 4.6 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:
- 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.

## **5. ACCESS TO AND USE OF CLIENT SYSTEM**

- 5.1 This Clause 5 shall apply where the Services Schedule states that the Services are to be provided using the RPO Only delivery model.
- 5.2 The Client shall create an account for Amberjack and provide Amberjack with login details for that account.
- 5.3 The Client hereby grants to Amberjack a worldwide, non-exclusive licence to use the Client System via a web-based app for the purpose of and to the extent required for Amberjack to perform the Services as set out in the Services Schedule.
- 5.4 Amberjack shall not:
- a) sub-license its right to access and use the Client System;
  - b) permit any unauthorised person to access or use the Client System;
  - c) use the Client System to provide services to third parties;
  - d) republish or redistribute any content or material from the Client System;
  - e) use the Client System in any way that causes, or may cause, damage to the Client System or impairment of the availability or accessibility of the Client System;
  - f) use the Client System 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 Client System; or
  - h) make any alteration to the Client System.

- 5.5 Amberjack shall use reasonable endeavours, including reasonable security measures relating to account access details, to ensure that no unauthorised person gains access to the Client System.
- 5.6 Amberjack must 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.
- 5.7 If the Client reasonably determines, or any third party alleges, that the use of the Client System by Amberjack in accordance with this Agreement infringes any person's Intellectual Property Rights, the Client may at its own cost and expense:
- a) modify the Client System in such a way that it no longer infringes the relevant Intellectual Property Rights; or
  - b) procure for Amberjack the right to use the Client System in accordance with this Agreement.

## **6. SUPPORT SERVICES**

- 6.1 This Clause 6 shall apply where the Services Schedule states that the Services are to be provided using the Amberjack Technology Solution Only or Amberjack Technology Solution and RPO delivery model and that Support Services will be provided.
- 6.2 Amberjack shall provide the Support Services to the Client during the Term with reasonable skill and care and in accordance with any specifications or service levels set out in the Services Schedule.
- 6.3 Amberjack may suspend the provision of the Support Services if any amount due to be paid by the Client to Amberjack under this Agreement is overdue, and Amberjack has given to the Client at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

## **7. CLIENT OBLIGATIONS**

- 7.1 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.
- 7.2 Where the Services are to be provided using the Amberjack Technology Solution Only or Amberjack Technology Solution and RPO models, 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.
- 7.3 Where the Services are to be provided using the RPO Only model, the Client shall provide to Amberjack or procure for Amberjack such access to and use of the Client System as may be reasonably required by Amberjack to enable Amberjack to perform the Services in accordance with this Agreement.
- 7.4 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.



- 7.5 Where the RPO Only model for delivery is to be used, the Client shall be solely responsible for ensuring that the Client System is fit for the performance of the Services.

## **8. CLIENT DATA**

- 8.1 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.
- 8.2 The Client shall have sole responsibility for the reliability, integrity, accuracy and quality of the Client Data.
- 8.3 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.

## **9. USE OF THIRD PARTY SERVICES**

- 9.1 This Clause 9 shall apply where the Client instructs Amberjack to use specified Third Party Services to provide any of the Services.
- 9.2 The Client acknowledges that:
- a) the use of Third Party Services may entail the transfer of Client Data and Candidate Data to Third Party Services providers; and
  - b) Amberjack has no control over, or responsibility in respect of, Third Party Services providers' use of Client Data or Candidate Data.
- 9.3 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.
- 9.4 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.
- 9.5 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.
- 9.6 Amberjack gives no warranties or representations in respect of any Third Party Services.
- 9.7 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.



## 10. CHANGE REQUEST PROCEDURE

- 10.1 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.
- 10.2 The other Party will consider any proposed change within 10 Business Days of its receipt of the Change Notice.
- 10.3 Either Party who receives a Change Notice from the other Party may:
- a) accept or reject the Change Notice;
  - b) request further information concerning the Change Notice; and/or
  - c) request amendments to a Change Notice.
- 10.4 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.
- 10.5 No proposed change will take effect until a Change Notice recording that change has been signed or agreed in writing by each Party.

## 11. FEES AND PAYMENT

- 11.1 Amberjack shall issue invoices for the Fees to the Client in accordance with the schedule set out in the Services Schedule.
- 11.2 The Client shall pay the Fees to Amberjack within 30 days of the relevant invoice date.
- 11.3 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.
- 11.4 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.
- 11.5 The Fees shall increase each year on the anniversary of the Effective Date by 5%.
- 11.6 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 Clause 24;

- 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% per annum above the Bank of England base rate 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).
- 11.7 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% per annum above the Bank of England base rate 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).

## 12. CONFIDENTIALITY

- 12.1 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.
- 12.2 Notwithstanding Clause 12.1, 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.
- 12.3 No obligations are imposed by this Clause 12 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.
- 12.4 The restrictions in this Clause 12 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.
- 12.5 Upon the termination or expiry of this Agreement, each Party must immediately cease to use the other Party's Confidential Information.

- 12.6 Subject to Clause 12.7 in the case of Amberjack and to Clause 12.8, 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.
- 12.7 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.
- 12.8 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.
- 12.9 The provisions of this Clause 12 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.

## **13. PUBLICITY**

- 13.1 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.

## **14. INTELLECTUAL PROPERTY RIGHTS**

- 14.1 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.
- 14.2 The Intellectual Property Rights in the Client Data shall remain owned by the Client.
- 14.3 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 Clause 14.5.
- 14.4 Neither Party shall have any rights to use the other Party's Intellectual Property Rights except as expressly set out in this Agreement.
- 14.5 Subject to Clause 14.1, the Client shall own any Intellectual Property Rights in and to the Work.

## **15. DATA PROCESSING**

- 15.1 Where Amberjack processes Personal Data in connection with this Agreement as a controller, Amberjack shall comply with its obligations as a controller under the Data Protection Legislation.
- 15.2 Where Amberjack processes personal data as a processor on behalf of the Client, both Parties shall comply with their respective obligations as set out in the Data Processing Schedule.

## **16. WARRANTIES**

- 16.1 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.
- 16.2 Where the Services are to be provided using the Amberjack Technology Solution Only or Amberjack Technology Solution and RPO delivery model, 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.
- 16.3 Where the Services are to be provided using the RPO Only delivery model, 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.
- 16.4 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.

## **17. ACKNOWLEDGEMENTS AND WARRANTY LIMITATIONS**

- 17.1 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.
- 17.2 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.
- 17.3 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.
- 17.4 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.
- 17.5 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.

## 18. INDEMNITIES

- 18.1 Amberjack shall 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"**).
- 18.2 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"**).
- 18.3 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.
- 18.4 The indemnity protection set out in this Clause 18 shall be subject to the limitations and exclusions of liability set out in this Agreement.

## 19. LIMITATIONS AND EXCLUSIONS OF LIABILITY

- 19.1 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.
- 19.2 The limitations and exclusions of liability set out in this Clause 19 and elsewhere in this Agreement:
- a) are subject to Clause 19.1; 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.
- 19.3 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.
- 19.4 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 shall not apply where such loss or corruption arises from a breach of a Party's obligations under the Data Processing Schedule.
- 19.5 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
- e) the causes set out in Paragraph 5.2 of the Data Processing Schedule.

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

- a) subject to Clause 19.6(b), 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 12 (Confidentiality) or 15 (Data processing) or under the indemnity in Clause 18.1 and the indemnity in Paragraph 5.3 of the Data Processing Schedule, £[500,000]

## 20. FORCE MAJEURE EVENT

- 20.1 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.
- 20.2 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.
- 20.3 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.

## 21. TERMINATION

- 21.1 Either Party may terminate this Agreement immediately by giving written notice of termination to the other Party if:
- a) the other Party commits any material breach of this Agreement, and the breach is not remediable;
  - b) 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;
  - c) the other Party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach);
  - d) a Force Majeure Event lasts for more than 3 months from the date of the notification pursuant to Clause 20.2a).
- 21.2 Either Party may terminate this Agreement immediately by giving written notice of termination to the other Party pursuant to Paragraph 6.1.4 of the Data Processing Schedule.



- 21.3 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).
- 21.4 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, of its intention to terminate this Agreement in accordance with this Clause 21.4.

## **22. EFFECTS OF TERMINATION**

- 22.1 Upon the termination or expiry of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 8.3, 9.4, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 27.6 and Paragraph 5 of the Data Processing Schedule.
- 22.2 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.
- 22.3 Following the expiry or termination of this Agreement for any reason:
- a) 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;
  - b) 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;
  - c) 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.

## **23. NON-SOLICITATION OF PERSONNEL**

- 23.1 The Client must not, without the prior written consent of Amberjack, either during the Term or within the period of 12 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of Amberjack (including any Associate) who has been involved in any way in the negotiation or performance of this Agreement.
- 23.2 Amberjack must not, without the prior written consent of the Client, either during the Term or within the period of 12 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Client who has been involved in any way in the negotiation or performance of this Agreement.



## 24. DISPUTE RESOLUTION

- 24.1 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.
- 24.2 If a dispute cannot be resolved in accordance with Clause 24.1 within twenty (20) Business Days of escalation to such senior executives by both Parties, either Party shall be entitled to initiate legal proceedings in accordance with Clause 27.6.

## 25. NOTICES

- 25.1 Any notice given under this Agreement must be in writing, whether or not described as "written notice" in this Agreement.
- 25.2 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.
- 25.3 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 in accordance with this Clause 25.
- 25.4 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.
- 25.5 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;
  - c) in the case of notices sent by post, 48 hours after posting;
  - d) in the case of notices sent by fax, at the time of the transmission of the fax (providing the sending party retains written evidence of the transmission); and
  - e) 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).

## 26. ASSIGNMENT

- 26.1 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.

## 27. GENERAL

- 27.1 **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.
- 27.2 **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.

- 27.3 **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.
- 27.4 **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 10.
- 27.5 **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 in respect of that subject matter. Neither Party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement, subject to Clause 19.1.
- 27.6 **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.

SIGNED for and on behalf of AMBERJACK

SIGNED for and on behalf of [**INSERT  
NAME OF CONTRACTING PARTY**]

.....

.....

Name: .....

Name: .....

Title: .....

Title: .....

Date: .....

Date: .....

## SCHEDULE 1 - SERVICES SCHEDULE

Service delivery model:	[Amberjack Technology Solution Only] [Amberjack Technology Solution and RPO] [RPO Only] [Consulting Solutions]
Amberjack Technology Solution: (if applicable)	
Description of the Services:	[Insert description of the Services to be provided.]
<i>To be completed where the Amberjack Technology Solution Only or Amberjack Technology Solution and RPO models are to be used to provide the Services:</i>	
Support Services to be provided:	[Not applicable] OR [Insert description of the technical support to be provided in respect of the Amberjack Technology Solution]
Amberjack Technology Solution specification:	[Not applicable] OR [Insert any relevant specifications – i.e. how will it be developed/set up to provide the Services?]
Compatible Client software and services:	[Not applicable] OR The Amberjack Technology Solution will be compatible with and accessible via [insert compatible web browsers etc.]
Client access to Amberjack Technology Solution:	[Not applicable] OR The Client will have [full access rights] [read only access] via [insert name/description of app].
<i>To be completed where the RPO Only model is to be used to provide the Services:</i>	
Client System:	[Not applicable] OR [Insert name and/or description of Client System]
Amberjack access to Client System:	[Not applicable] OR Amberjack will have [full access rights] [read only access]

Applicable instructions and/or policies for Amberjack's use of Client System:	[Not applicable] OR [Insert specific reference to e.g. the Client's Acceptable Use Policy available at a web address/attached to this Schedule]
<i>To be completed where the Client has instructed Amberjack to use Third Party Services to provide the Services:</i>	
Third Party Services:	[Not applicable] OR [Insert details of e.g. online assessment testing service or assessment venue provider]
Payment arrangements for Third Party Services:	[Not applicable] OR [E.g. will the Client pay the third party's fees directly, enable Amberjack to access the third party services via the Client's account, or pay additional Fees to cover the third party's fees?]
<i>To be completed where Amberjack has suggested using a particular third party provider to provide elements of the Services:</i>	
Approved Sub-contractors:	[Insert the following details for each relevant third party provider]  <b>INCLUDE MICROSOFT AZURE</b>  Sub-contractor name: Will use of this sub-contractor involve a transfer of Candidate Personal Data outside the EEA? If yes, to what countries? If yes, what adequacy decision or safeguards are in place in respect of that transfer?
<i>To be completed for all delivery models:</i>	
Client Data and Candidate Data deletion process:	[Amberjack will delete Client Data and Candidate Data in accordance with the Data Disposal Procedure] OR  [Amberjack will delete Client Data and Candidate Data in accordance with the following process: [insert Client stipulations]]  [The Client will be solely responsible for deleting Client Data and Candidate Data from the Client System.]
Fees (as at the Effective Date):	[Insert fee breakdown]

Invoicing schedule:	[Insert dates on which Amberjack will submit invoices]
Service Levels:	[Insert any relevant service levels]
Amberjack contact details:	[Insert job title and contact details for contractual notices]
Client contact details:	[Insert job title and contact details for contractual notices]

## SCHEDULE 2 - DATA DISPOSAL PROCEDURE

This Schedule sets out the data disposal procedures that Amberjack will adhere to in the absence of any different process stipulated by the Client and set out in the Services Schedule.

For the purposes of this Schedule:

**"Data"** refers to Client Data and Candidate Data;

**"System Data"** refers to Data that is held within an Amberjack Technology Solution and hosted by Amberjack;

**"Local Data"** refers to 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.

Where Services are delivered using an Amberjack Technology Solution Only or Amberjack Technology Solution and RPO delivery model, the following procedure will be applied:

### System Data

- 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

- 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.

Where Services are delivered using the RPO Only delivery model, the following procedure will be applied:

As no Amberjack Technology Solution is used in these circumstances, Amberjack will not be in possession of any System Data, only Local Data.

- Once a campaign has been completed Amberjack will retain any Local Data related to the campaign for the Storage Period and delete such Local Data at the end of the Storage Period.
- Amberjack will not provide a copy of Local Data to the Client.

## DATA PROCESSING SCHEDULE

This provisions of this Schedule shall apply to all Processing of Candidate Personal Data under the Agreement.

### 1. Definitions

1.1. The following terms shall have the meanings given to them below:

**"Candidate Personal Data"** means Personal Data relating to Candidates, as described in further detail in Appendix 1 to this Schedule;

**"Data Protection Legislation"** means all laws, regulations, legislative and regulatory requirements and codes of practice applicable to the Processing of Personal Data including, without limitation, the UK Data Protection Act 1998 and any regulations, instruments or codes of practice issued pursuant to that Act, Directive 95/46/EC of the European Parliament and of the Council of October 24 1995 and any successor legislation replacing, repealing or amending those laws, including (with effect from 25 May 2018) the GDPR;

**"GDPR"** means 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.

1.2. **"Controller", "Data Subjects", "Personal Data", "Processor" and "Processing/Process"** shall have the meanings given to them in the Data Protection Legislation applicable from time to time.

1.3. Any other capitalized terms used in this Schedule which are not defined in Paragraphs 1.1 or 1.2 shall have the meanings given to them in the Agreement.

### 2. Processing

2.1. The subject matter, nature and purpose and duration of the Processing of Candidate Personal Data under the Agreement is set out in Appendix 1 to this Schedule.

2.2. The Client is the Controller, and Amberjack is the Processor, of Candidate Personal Data.

2.3. The Client instructs Amberjack to Process the Candidate Personal Data as required to perform the Services in accordance with the Agreement.

### 3. Client obligations in relation to Processing of Candidate Personal Data

3.1. The Client shall comply with all its obligations as a Controller under the Data Protection Legislation in respect of the Candidate Personal Data.

3.2. Without prejudice to the generality of Paragraph 3.1, the Client shall ensure that:

3.2.1. the Processing of Candidate Personal Data by Amberjack in accordance with the Agreement, including as a result of Amberjack's use of any Third Party Services and/or the Client System to provide the Services; and

3.2.2. the transfer of Candidate Personal Data to a Third Party Services provider and use of Candidate Personal Data by a Third Party Services provider,

is lawful for the purposes of the Data Protection Legislation.



3.3. The Client acknowledges and agrees that as it is the Controller in respect of the Candidate Personal Data, it is responsible for providing Candidates with the information about the Processing of Candidate Personal Data stipulated by the Data Protection Legislation. Where an Amberjack Technology Solution is used to provide the Services, Amberjack may assist the Client with this responsibility by providing the Client with a template information notice for this purpose and by making the information notice available via the Amberjack Technology Solution. The Client acknowledges and agrees that any such assistance will not relieve it of its obligations as the Controller of the Candidate Personal Data to provide the information, that it shall remain responsible for the content and provision of the Processing information provided to Candidates and that Amberjack shall have no liability to the Client in respect of the content and provision of the Processing information.

#### **4. Amberjack obligations in relation to Processing of Candidate Personal Data**

4.1. Amberjack shall:

- 4.1.1. Process Candidate Personal Data only pursuant to and in accordance with written instructions from the Client, which are set out in paragraph 2.3 above. No changes to the instructions by the Client shall have effect unless acknowledged and agreed to in writing by Amberjack;
- 4.1.2. Process the Candidate Personal Data only as necessary for the purposes of performing the Services in accordance with the Agreement;
- 4.1.3. Process the Candidate Personal Data in compliance with all its obligations as a Processor under applicable Data Protection Legislation;
- 4.1.4. not transfer or permit the transfer of Candidate Personal Data to any country outside the European Economic Area (EEA) or any "third country" as that term is used in the Data Protection Legislation applicable from time to time without the prior written consent of the Client, provided that if the Services are to be provided using Third Party Services, an Approved Sub-contractor or the Client System, the Client's signature of the Agreement shall constitute written instructions of the Client to make any transfer that occurs as a result of using such Third Party Services, Approved Sub-contractor or the Client System;
- 4.1.5. ensure that access to Candidate Personal Data is limited to those Amberjack Personnel who have a reasonable need to access Candidate Personal Data to enable Amberjack to perform its obligations under the Agreement and is limited to such part or parts of the Candidate Personal Data as are strictly necessary;
- 4.1.6. take reasonable steps to ensure the reliability of any Amberjack Personnel who have access to the Candidate Personal Data including without limitation ensuring that all relevant Amberjack Personnel are informed of the confidential nature of the Candidate Personal Data and agree to treat it as confidential information, have undertaken training in the laws relating to handling Personal Data, and are aware of Amberjack's duties in respect of Candidate Personal Data;
- 4.1.7. have in place appropriate security measures (both technical and organisational) which comply with the security requirements of the Data Protection Legislation applicable from time to time, provided that Amberjack shall not have any responsibility for, or liability in connection with, the security measures implemented by the Client or any third party in relation to the Client System or Third Party Services;

- 4.1.8. not sub-contract the Processing of any Candidate Personal Data without the Client's written approval (not to be withheld or delayed unreasonably) except to Associates and any Approved Sub-contractor and except as may result from Amberjack's use of any Third-Party Services and/or the Client System to provide the Services;
- 4.1.9. ensure that where Amberjack engages a subcontractor to Process any Candidate Personal Data, this will be subject to a written agreement between Amberjack and the sub-contractor that imposes the same or equivalent obligations on the sub-contractor as are imposed on Amberjack under this Schedule;
- 4.1.10. assist the Client in responding to requests from Data Subjects relating to the exercise of their rights under Data Protection Legislation in relation to the Candidate Personal Data;
- 4.1.11. provide the Client with any relevant information necessary to enable the Client to comply with its obligations under Data Protection Legislation in relation to security, breach notification, data protection impact assessments and prior consultation in relation to the Candidate Personal Data.
- 4.2. Amberjack shall notify the Client as soon as practicable:
  - 4.2.1. of any accidental or unlawful loss, alteration, destruction, unauthorized disclosure of, or access to, any Candidate Personal Data, in which case Amberjack shall provide the Client with any relevant information available to Amberjack in order to assist the Client with its obligations under Data Protection Legislation in relation to the security breach;
  - 4.2.2. if Amberjack receives any complaint or regulatory notice which relates to the Processing of any of the Candidate Personal Data;
  - 4.2.3. if Amberjack receives any request from a Data Subject relating to their rights under the Data Protection Legislation in respect of Candidate Personal Data relating to them; or
  - 4.2.4. if Amberjack considers that an instruction from the Client infringes applicable Data Protection Legislation.
- 4.3. Upon termination or expiry of the Agreement, or at the point at which Amberjack ceases to perform the Services for the Client, Amberjack shall delete and/or return any Candidate Personal Data stored within the Amberjack Technology Solution or otherwise in Amberjack's possession 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, provided that Amberjack shall not have any responsibility for, or liability in connection with, deletion or return of Candidate Personal Data stored within the Client System.
- 4.4. Notwithstanding anything else in this Schedule, Amberjack may Process the Candidate Personal Data otherwise than in accordance with the Client's instructions if and to the extent that it is required by any applicable law to which it is subject to Process Candidate Personal Data otherwise than in accordance with the Client's instructions, provided that Amberjack informs the Client of that legal requirement before carrying out such Processing unless prohibited by that law from doing so.
- 4.5. Amberjack shall make available to the Client all information necessary to demonstrate Amberjack's compliance with its obligations under this Schedule, which may (without limitation) be done by making such information available via Amberjack's website. Amberjack shall permit the Client or a third party auditor appointed by the Client to carry out audits of Amberjack's systems and processes for the

purpose of verifying Amberjack's compliance with its obligations under this Schedule, and to contribute to such audits, provided that:

- 4.5.1. the Client gives reasonable written notice of any audit to Amberjack;
- 4.5.2. any audit takes place within Working Hours;
- 4.5.3. audits take place no more than once a year;
- 4.5.4. all personnel who carry out the audit sign appropriate confidentiality agreements;
- 4.5.5. the Client pays any reasonable costs incurred by Amberjack in connection with an audit, unless the audit reveals that Amberjack is in breach of its obligations under this Schedule; and
- 4.5.6. the personnel shall have no rights to direct, and Amberjack shall have no obligations to carry out, any act in pursuance of an audit which would be a breach of Data Protection Legislation.

## 5. Liability and indemnification in connection with Processing Candidate Personal Data

- 5.1. Amberjack shall be liable to the Client for the Processing of Candidate Personal Data by Associates, Approved Sub-contractors and any other sub-contractor engaged by Amberjack with the Client's written approval, but shall have no liability for any sub-contracting of any Processing of Candidate Personal Data that may result from Amberjack's use of any Third Party Services and/or the Client System to provide the Services.
- 5.2. Without prejudice to Clause 19.5 of the Agreement, Amberjack shall have no liability to the Client for any losses or damages arising as a result of:
  - 5.2.1. the Client failing to comply with its obligations under this Schedule;
  - 5.2.2. the Client's breach of Data Protection Legislation;
  - 5.2.3. Amberjack complying with any instruction given by the Client in relation to the Processing of Candidate Personal Data;
  - 5.2.4. the Processing of any Candidate Personal Data by and/or the transfer or disclosure of Candidate Personal Data to: (i) Third Party Services providers; or (ii) the Client and/or any third party in connection with use of the Client System to provide the Services;
  - 5.2.5. the Processing of any Candidate Personal Data ceasing to be compliant with the Data Protection Legislation as a result of a Candidate withdrawing any consent to the Processing of their Personal Data where such withdrawal of consent is not notified to Amberjack.
- 5.3. Each Party (the "**Indemnifying Party**") shall indemnify the other Party (the "**Indemnified Party**") against any losses, damages, costs, penalties or other liabilities incurred by the Indemnified Party arising out of any claims made against the Indemnified Party by or on behalf of Data Subjects that arise out of the Indemnifying Party's breach of its obligations under this Schedule or under the Data Protection Legislation. This indemnity shall be subject to the provisions of Clause 18.3 of the Agreement.
- 5.4. Without prejudice to Paragraph 5.3, the Client shall indemnify Amberjack against any losses, damages, costs, penalties or other liabilities incurred by Amberjack arising out of any claims made against Amberjack by or on behalf of Data Subjects and/or any regulatory action against Amberjack by a supervisory authority under the Data Protection Legislation that arise out of:

- 5.4.1. Amberjack complying with any instruction given by the Client in relation to the Processing of Candidate Personal Data;
- 5.4.2. the Processing of any Candidate Personal Data by (i) Third Party Services providers; or (ii) the Client and/or any third party in connection with use of the Client System to provide the Services; or
- 5.4.3. the Processing of any Candidate Personal Data ceasing to be compliant with the Data Protection Legislation as a result of a Candidate withdrawing any consent to the Processing of their Personal Data where such withdrawal of consent is not notified to Amberjack.

This indemnity shall be subject to the provisions of Clause 18.3 of the Agreement.

- 5.5. The limitations and exclusions of liability set out at Clause 19 of the Agreement shall apply to the liability of the Parties under this Schedule, including the indemnities in Paragraphs 5.3 and 5.4.

## 6. Brexit-related provisions

- 6.1. The following shall apply if and when the United Kingdom (UK) ceases to be a member of the European Union (EU) and/or the EEA ("**Brexit**"):
  - 6.1.1. Amberjack shall not automatically be deemed to be in breach of Paragraph 4.1.4 as a result of the UK ceasing to be a member of the EU and/or EEA;
  - 6.1.2. If the Processing of Candidate Personal Data in the UK by Amberjack would constitute a transfer to a third country under the Data Protection Legislation applicable at the time and there is no adequacy decision in respect of the UK under the Data Protection Legislation applicable at the time, Amberjack will take any appropriate available steps to ensure that the Processing of Candidate Personal Data in the UK complies with one of the conditions for transfers to third countries provided for under the Data Protection Legislation applicable at the time (a "**Transfer Mechanism**");
  - 6.1.3. If the Processing of Candidate Personal Data in the UK by Amberjack would constitute a transfer to a third country under the Data Protection Legislation applicable at the time and there is no adequacy decision in respect of the United Kingdom and no available Transfer Mechanism, the Parties shall negotiate in good faith to amend this Schedule in such a way that the Processing of Candidate Personal Data in the UK by Amberjack complies with the Data Protection Legislation applicable at the time;
  - 6.1.4. If, despite good faith negotiations, the Parties are unable to agree an amendment to this Schedule which would bring the Processing of Candidate Personal Data in the UK by Amberjack into compliance with the Data Protection Legislation applicable at the time, either Party may terminate the Agreement by giving written notice of termination to the other Party.

## 7. Changes in Data Protection Legislation

- 7.1. If any changes or prospective changes to the Data Protection Legislation result or will result in one or both Parties not complying with the Data Protection Legislation in relation to Processing of Candidate Personal Data carried out under the Agreement, then the Parties shall use their best endeavors promptly to agree such variations to the Agreement as may be necessary to remedy such non-compliance.

## Appendix 1

### Scope of Processing

<b>Subject matter of Processing</b>	Candidate Personal Data is Processed by Amberjack in connection with providing the Services to the Client pursuant to the Agreement.
<b>Nature of Processing</b>	The Processing of Candidate Personal Data will be a substantial, necessary and integral part of the performance of the Services.
<b>Purpose of Processing</b>	The provision of recruitment process outsourcing services to the Client.
<b>Duration of Processing</b>	The Processing will take place during the Term of the Agreement.
<b>Categories of Data Subjects</b>	Candidates.
<b>Types of Personal Data that may be Processed</b>	The types of Personal Data 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.
<b>Amberjack's Data Protection Officer</b>	Stephanie Hailey Stephanie.Hailey@weareamberjack.com