

[amber labs] G-Cloud 14 Terms and Conditions



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1 G-Cloud 14 Master Services

This Master Services Agreement (“Agreement”) sets out the terms and conditions under which Amber Labs Ltd (“We”, “Us”) will provide G-Cloud 14 services (“Services”) and deliverables (“Deliverables”) to Central Government Departments and Public Sector Bodies (“You”). The terms and conditions in this Agreement must be taken together with a separately signed Statement of Work (SOW), to be created at the time such Services are purchased from Us, whereby conditions set out herein will be incorporated. In the event of a conflict, an attachment to this Agreement shall prevail over this Agreement and the terms of any SOW shall also prevail over this Agreement.

1.1 Provision of Services

We shall perform the Services in accordance with the specific terms as set out in the SOW.

1.2 Milestone Commitments

Unless specifically agreed otherwise in the SOW, We shall use reasonable endeavours to perform the Services in accordance with any milestone dates specified in the SOW or agreed between Us in writing. We shall be under no obligation with respect to milestone dates that have not been agreed in writing.

1.3 Acceptance

A Deliverable will be deemed accepted if it is not rejected by You in the form of written notice within 10 days from the date, We tell You the Deliverable is ready for review or if the Deliverable is subsequently used or modified by You. Where a deliverable is rejected by You, You shall notify Us in writing, with sufficient details and comments in respect of the failure so that if We update the Deliverable to address the comments, it shall meet the relevant Acceptance Criteria in all material respects. We shall then use reasonable endeavours to remedy the material defects and re-issue the relevant Deliverable for review against the relevant Acceptance Criteria within 30 days from the date of Your notice unless a longer period is mutually agreed as reasonable.

Following acceptance, You may not make any claims in respect of any defects or problems which are subsequently discovered by You in respect of the Deliverable

1.4 Warranties

We warrant that our Deliverables will comply with their applicable specifications. We will perform any re-work not materially in compliance with this warranty which is brought to our attention within 15 days after the work has been performed. In addition, each Party warrants that upon its execution, this Agreement or any SOW will not materially violate any term or condition of any agreement that such Party has with any third-party and that the officers executing this Agreement or SOW are authorised to bind such Party to the terms and conditions hereof. To the extent permitted by law, the preceding are the only warranties and over-ride all other warranties, terms, conditions

and representations, express or implied, including fitness for purpose, satisfactory quality, non-infringement or otherwise.

1.5 Payment Terms

We will invoice You at the beginning of each month, for the fees for the previous month, plus any agreed expenses. You shall make payment in full, without set off or deduction, within 30 days of the invoice date. We shall be entitled to charge interest on invoices which remain unpaid for more than 30 days, at the lesser of 1% per month or the highest rate allowed by law. You will be responsible for the payment of all taxes in connection with this Agreement including but not limited to VAT.

1.6 Changes

This Agreement including the Deliverables and Conditions defined in the SOW may not be modified or amended except by the mutual written agreement of the authorised representatives of the Party's carried out in accordance with the agreed Change Control Procedure defined below.

Where either Party wants to make any Change to the Agreement, the Party wishing to make the Change shall discuss the Change with the other Party and such discussion shall result in either: (1) a written request for a Change by You; or (2) a written recommendation for a Change by Us or (3) if neither Party wishes to submit a request or recommendation, the proposal for the Change will not proceed.

Where a written request for a Change is required by You, You shall, unless otherwise agreed, submit a Change Request Notification to Us at the time of such recommendation and We will confirm receipt of the request within 5 Business Days.

Where Amber Labs wishes to make a Change, We shall, unless otherwise agreed, submit a written Change Request Notification direct to You at the time of such recommendation and You will confirm receipt of the request within 5 Business Days.

Neither Party shall be obliged to accept any request for Change made by the other and shall have no liability for failing to do so.

A Change Request Notification (CRN) shall contain:

1. Title of the CRN.
2. Person requesting the CRN.
3. The reason for the CRN.
4. The details of the CRN.
5. A proposed timetable for implementing the CRN.
6. The impacts on any existing deliverables defined in the Agreement.
7. The price of the CRN.
8. Date of expiry of the CRN (which shall not be less than 30 Business Days).
9. Provision for signature of the CRN by Us and You.

Once signed by Us and You, the Change shall be immediately effective and both Party's shall perform their respective obligations based on the agreed amendment.

1.7 Your Obligations

In addition to any obligations described in the SOW, You will also meet the obligations listed below. If any of the obligations are not performed We reserve the right to make changes to the schedule, costs and deliverables of the associated SOW.

1. You shall set overall direction for the work, review and provide guidance on options and priorities, and provide ownership for the outcomes of the Agreement.
2. You will provide the necessary people resources to support our activities in relation to this Agreement.
3. You shall be responsible for obtaining at no cost to Us, licenses and timely access to any required third-party tools or products that You administer, and that We may require in order to deliver our Services to You.
4. You shall be responsible for the performance, coordination and cooperation of any other Vendors or Third-Parties that are involved in or connected to the delivery of our Services.
5. You shall be responsible for the provision of access to all necessary information systems, information, hardware, equipment and personnel as deemed necessary for delivery of our Services.

1.8 Termination

Either Party may, upon giving 30 days written notice, terminate a SOW for material breach unless the Party receiving the notice cures such breach within the 30-day period. You may, upon giving 30 days written notice, terminate an SOW for convenience.

Following termination of an SOW, You will pay Us for all Services and Deliverables rendered, inclusive of the costs and expenses for all work planned for completion during the 30-Day period.

Upon termination by Us for breach or by You for convenience, You will also pay all of our demobilisation costs. All provisions of the Agreement which are intended to survive expiration or termination of the Agreement will survive such expiration or termination.

1.9 Intellectual Property Rights

Party's shall retain ownership of their intellectual property including patents, copyrights, know-how, trade secrets and other proprietary rights (known as "IP") which existed prior to this Agreement. Party's shall retain IP developed, licensed or acquired independently from the Services or the Deliverables in this Agreement, including any modifications or derivatives which may be created as part of the Services delivered by this Agreement. You grant to Us, for the duration of the Agreement,

a non-exclusive, fully paid, worldwide, non-transferable, limited license to use Your Pre-Existing IP solely for the purpose of providing the Services and Deliverables. All IP in the Deliverables will remain assigned to Us.

Upon final payment We will grant to You, subject to any restrictions applicable to any third-party materials embodied in the Deliverables, a perpetual, worldwide, non-transferable, non-exclusive, irrevocable right and license to use, copy, modify and prepare derivative works of the Deliverables for purposes of Your internal business only.

You will not preclude Us from independently developing for ourselves, or for others, anything which is competitive with, or similar to the Deliverables provided by this Agreement.

1.10 Non-Solicitation

Neither Party shall employ or solicit the services of, offer work to or employ, directly or indirectly, any of the other Party's Employees or Affiliates during their engagement in this Agreement or during the 6 months after the Employee completes their work on the Services included in this Agreement.

1.11 Force Majeure

Neither Party will be liable for any delay or failure as a consequence of circumstances beyond our control including War, Armed Conflict, Acts of God, Fire, Explosions, Industrial Dispute, Illness, Industrial Dispute, Civil Disturbance (Force Majeure). In the event of circumstances of Force Majeure either Party will be entitled to terminate this Agreement and You will pay Us for all Services performed up to the point of termination. Following termination of the Agreement, You will pay Us for all Services and Deliverables rendered, inclusive of the costs and expenses for all work planned for completion during the subsequent 30-Day period.

1.12 Liability

The sole liability of either Party to the other in relation to any and all claims in any manner related to this Agreement (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) will be for direct damages, not to exceed an amount equal to the fees paid or payable to Us under the applicable SOW. If the term of the SOW is 12 months or longer, the liability of each Party will be limited in the fees paid or payable under the applicable SOW during the 12 month period immediately preceding the event giving rise to the first such claim or, in respect of any such event occurring during the first 12 months of the SOW, the fees paid or payable under the applicable SOW during the first 12 months).

In no event will either Party be liable for any: (1) consequential, indirect, incidental, special or punitive damages, or (2) loss of profits, revenue, business, opportunity or anticipated savings (whether directly or indirectly arising).

1.13 Indemnity

Each Party will defend and indemnify the other Party, including its parents, subsidiaries, affiliates, successors, and their directors, officers, employees, agents and representatives, against any third-party claims, including fines and penalties, that a Party's IP or Deliverable provided as part of this Agreement, (a) infringes a third-party's copyright, trade mark existing or patent granted as of the date of delivery in any country in which the Services are delivered, or (b) misappropriates a third-party's trade secrets. If any Amber Labs IP used in the Services, or is likely to be held to be, infringing, We will at our expense either: (1) procure the right for You to continue using it, (2) replace it with a non-infringing equivalent, (3) modify it to make it non-infringing, or (4) direct the return of the infringing IP or Deliverable and refund to Client the fees paid for it.

The indemnifying Party will have no liability where infringement or misappropriation was caused by: (1) modifications to any IP or Deliverable made by or on behalf of You; (2) use of the IP or Deliverable other than as permitted under the Agreement (3) the failure to use corrections or enhancements to the IP or Deliverable as provided by Us. To receive the benefits of this provision, the indemnified Party must promptly, and in any event within 5 business days, notify Us in writing of the third-party claim and provide reasonable cooperation and full authority to the Us to defend or settle the claim.

1.14 Confidentiality

Each Party may have access to information that relates to the other Party and its activities which is identified by the disclosing Party as confidential or reasonably understood to be confidential ("Confidential Information"). The receiving Party agrees that Confidential Information may only be used for the purposes set out in this Agreement and that it will protect Confidential Information in the same manner that it protects its own similar confidential information but in no event using less than a reasonable standard of care.

Confidential Information may only be disclosed to an employee, subcontractor or (with the consent of the other Party) to a third-party if required for the purpose of the Agreement and provided such Party's are bound by substantially similar obligations of confidentiality.

Nothing in this Agreement will prohibit or limit either Party's use of information (1) previously known to it without an obligation not to disclose such information, (2) independently developed by or for it without the use of Confidential Information, (3) acquired by it from a third- party which was not, to the receiver's knowledge, under an obligation not to disclose such information, or (4) which is or becomes publicly available through no breach of the Agreement.

Nothing in this Agreement will prohibit either Party from disclosing the existence of this agreement and its contents to the extent that disclosure is required by any Applicable Law or by the Order of a ruling Court.

1.15 References

With written consent, We will be permitted by You to refer to You as a Client of ours and prepare Reference information that may be shared Publicly or Directly with potential Clients of ours, which

could contain information regarding our general work completed under this Agreement, notwithstanding our Confidentiality obligations to You as defined in Clause 1.14