

# Terms of Business

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These terms and conditions of business (as amended from time to time in accordance with clause 12.9) together with the Schedule(s) ("**Agreement**") forms the terms on which Amba People Limited, company number 04316451, registered office at 85 Great Portland Street, First Floor, London, W1W 7LT ("**We**", "**Us**", "**Our**") agree to provide Services to the person purchasing Services from Us

## 1. Interpretation

### 1.1 Definitions

In this Agreement, the following definitions apply:

**"Business Day"**: a day (other than a Saturday, Sunday or public holiday) when banks in London are generally open for business.

**"Charges"**: the charges payable by You as set out in the Schedule(s) for the supply of the Services in accordance with clause 5.

**"Commencement Date"**: as defined in Schedule 1.

**"Deliverables"**: the deliverables set out in the Schedule(s).

**"Implementation Period"**: a period equivalent to the time it takes for Us to implement and set up the Services for You, as detailed in the Schedule.

**"Intellectual Property Rights"**: all patents, rights to inventions, copyright and related rights, trade marks, domain names, rights in goodwill or to sue for passing off, rights in designs, rights in computer software (including but not limited to source code), database rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**"Schedules"**: the Schedules or Schedules attached to this Agreement which describes the Services to be provided by Us to You.

**"Services"**: the services, including the Deliverables, supplied by Us to You as set out in the Schedules.

### 1.2 Interpretation

In this Agreement, the following rules apply:

(a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) a reference to a **party** includes its successors or permitted assigns;

(c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(d) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(e) a reference to **writing** or **written** includes faxes and e-mails.

## 2. Basis of contract

2.1 We agree to provide, and You agree to take and pay for the Services in accordance with this Agreement from the Commencement Date.

2.2 This Agreement constitutes the entire agreement between the parties. You acknowledge that You have not relied on any statement, promise or representation made or given by or on behalf of Us which is not set out in this Agreement.

2.3 This Agreement applies to the exclusion of any other terms that either party may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. You

waive any right you might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents that is inconsistent with this Agreement.

- 2.4 Any quotation given by Us shall not constitute an offer and is only valid for a period of ten (10) Business Days from its date of issue unless we agree otherwise.

### 3. Supply of Services

- 3.1 We shall use our reasonable endeavours to meet any performance dates specified in the Schedules, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.2 We shall have the right to make any changes to the Services which are necessary to comply with any applicable law, or which do not materially affect the nature or outcome of the Services, and We shall seek to notify You in any such event.
- 3.3 We shall provide the Services in all material respects using reasonable care and skill, in accordance with industry practice.

### 4. Your obligations

- 4.1 You shall:
- (a) ensure that the description of the Services is complete and accurate.
  - (b) co-operate with Us as we require in all matters in a timely and efficient manner relating to the provision of the Services; and
  - (c) provide Us with such information and materials in a timely and efficient manner as We may reasonably require in order to supply the Services and ensure that such information is accurate in all respects.
- 4.2 If Our performance of any of obligations under this Agreement is prevented or delayed by any act or omission by You or failure by You or Your agents, workers or independent contractors to perform any relevant obligation ("**Your Default**"):
- (a) We shall, without limiting Our other rights or remedies, have the right to suspend performance of the Services until You remedy Your Default, and to rely on Your Default to relieve Us from the performance of any of Our obligations to the extent Your Default prevents or delays performance of any of Our obligations.
  - (b) We shall not be liable for any costs or losses sustained or incurred by You arising directly or indirectly from Our failure or delay to perform any of Our obligations as set out in this clause 4.2; and
  - (c) You shall reimburse Us on written demand for any costs or losses sustained or incurred by Us arising directly or indirectly from Your Default.

### 5. Charges and payment

- 5.1 The Charges for the Services shall be as set out in the Schedule(s) and may be expressed as a fixed fee, time and materials cost, hourly/daily rate, rate of commission or any combination of the same.
- 5.2 If the Charges are based on hourly/daily rates, these shall be calculated on the basis of an eight (8) hour day from 9.00am to 5.00pm on Business Days ("**Standard Hours**"). We reserve the right to increase Our standard fee rates, provided that such charges cannot be increased more than once in any twelve (12) month period. We will give You written notice of any such increase ten (10) Business Days before the proposed date of the increase. If such increase is not acceptable to You, You shall notify Us in writing within five (5) Business Days of the date of Our notice and We shall have the right, without limiting Our other rights or remedies, to terminate this Agreement by giving You one week's written notice. On each anniversary date of this Agreement the Charges shall automatically increase by such percentage as is equal to the percentage increase set out in the 'Consumer price inflation' index published the Office for National Statistics for the most recent period of 12 consecutive months for which figures are available.
- 5.3 We shall be entitled to charge an overtime rate for any time worked by individuals whom You engage to provide the Services outside Standard Hours at the rate(s) set out in the Schedule(s).

- 5.4 We shall be entitled to charge You for any expenses reasonably incurred by the individuals whom We engage in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Us for the performance of the Services, and for the cost of any materials. We shall provide You with copies of any invoices and receipts upon request.
- 5.5 We shall invoice You on completion of the Services or monthly (in arrears or in advance) as set out in the Schedule(s).
- 5.6 You shall pay each invoice submitted by Us:
- (a) within thirty (30) days of the date of the invoice or as set out in the Schedule(s); and
  - (b) in full and in cleared funds using such methods as set out in Our invoices; and
  - (c) time for payment shall be of the essence.
- 5.7 All amounts payable by You are exclusive of amounts in respect of value added tax chargeable for the time being ("**VAT**"). Where any taxable supply for VAT purposes is made by Us to You, You shall, on receipt of a valid VAT invoice from Us, pay to Us such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.8 Without limiting any of Our other rights or remedies, if You fail to make any payment due to Us under this Agreement by the due date for payment ("**Due Date**"), We shall have the right to charge interest on the overdue amount at the rate of five per cent (8%) per annum above the then current Barclays Bank PLC's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly. We shall also be entitled to suspend the Services unless and until such outstanding amounts until these are settled (as per clause 9.3 of this Agreement).
- 5.9 You shall pay all amounts due under this Agreement in full without any deduction or withholding except as required by law and You shall not be entitled to assert any credit, set-off or counterclaim against Us in order to justify withholding payment of any such amount in whole or in part. We may, without limiting Our other rights or remedies, set off any amount owing to Us by You against any amount payable by Us to You.
- 5.10 In the event of a dispute relating to the Charges, You shall notify Us in writing within seven days of the date of the invoice of the amount genuinely and honestly disputed and provide documentary support, failing which the full invoice shall be deemed accepted and payable by the Due Date. If you provide the information and documentary evidence within seven days of the date of the invoice, the parties shall cooperate and use best endeavours to resolve the dispute to enable You to make payment by the Due Date. In any event, the undisputed amount must be paid by the Due Date. Non-payment is a ground for termination.
- 5.11 In the event that the Charges are not paid by the Due Date, and further action is required, Your directors and shareholders will become jointly and severally liable with You for the Charges and all outstanding liabilities as well as all ongoing legal fees in connection with recovering the Charges or dealing with breaches of this Agreement, and You shall fully indemnify Us immediately on notice.

## 6. Intellectual property rights

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Us and provided You comply fully with your obligations in this Agreement, We grant you a non-exclusive licence to use and apply any of the Deliverables for Your internal business purposes only.
- 6.2 You acknowledge that, in respect of any third party Intellectual Property Rights, Your use of any such Intellectual Property Rights is conditional your full compliance with your obligations under this Agreement and on Us obtaining a written licence from the relevant licensor on such terms as will entitle Us to license such rights to You.

## 7. Confidentiality & Data Protection

- 7.1 A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under this Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 7.2 The obligations of confidentiality set out in clause 7.1 shall not extend to any information in the public domain (other than as a result of a party breaching its obligations under clause 7.1) or any information required to be disclosed by law or a court of competent jurisdiction.
- 7.3 Amba will comply with all applicable requirements of the Data Protection Legislation and all Applicable Laws. We will require you to adhere to the same standard of compliance. This obligation is in addition to, and does not relieve, remove or replace, either party's obligations under the Data Protection Legislation as defined below:
- **Data Protection Legislation:** the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.
  - **UK Data Protection Legislation:** any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.
  - **Applicable Laws:** (for so long as and to the extent that they apply) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 7.4 You agree that for the purposes of the Data Protection Legislation, You are the "Data Controller" and the We are a "Data Processor" in respect of any "Personal Data" processed by Us in the provision of the Services (where Personal Data, Data Processor and Data Controller have the meaning defined in the Data Protection Legislation).
- 7.5 We agree to only process Personal Data to the extent and in such a manner as necessary for the provision of the Services, in accordance with Your instructions and as per the Data Processing Agreement and not for any other purposes. You and Us shall enter into a Data Processing Agreement before We commence any processing of Personal Data in the provision of the Services. For the purposes of the foregoing, a Data Processing Agreement means Our (or such other mutually acceptable) data processing agreement governing the processing of Personal Data, as required by and in accordance with the Data Protection Legislation (both as defined in clauses 7.4 and 7.3 respectively).
- 7.6 If We receive any complaint or notice relating directly or indirectly to the processing of Personal Data by Us in the provision of the Services, we shall immediately notify You and provide you with Our full co-operation and assistance.
- 7.7 You acknowledge that We are reliant on Your direction and instructions as to the extent to which We are entitled to use or have access to and process Personal Data. Consequently, you agree that We shall not be liable for and you agree to fully indemnify Us against any claims, losses, damages, fines or expenses (including all legal fees) arising out of or in connection with the processing of Personal Data by Us under this Agreement arising out of or in connection with your breach of the Data Protection Legislation, except to the extent that any negligence or wilful default has been caused by Us.
- 7.8 You must ensure that you have all necessary appropriate consents, notices and data security measures in place to enable lawful transfer of the Personal Data for the duration and purposes of this engagement.
- 7.9 The parties agree that, in the event of a discrepancy between this Agreement and the Data Processing Agreement, the Data Processing Agreement shall prevail.

## 8. Limitation of liability

- 8.1 Nothing in this Agreement shall limit or exclude Our liability for any matter which cannot be excluded by law including death or personal injury, fraud or fraudulent misrepresentation.
- 8.2 Subject to clause 8.1:
- (a) We shall under no circumstances whatever be liable to You, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with this Agreement.
  - (b) Our total liability to You in respect of all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges paid by you in the previous period of 12 months or one million pounds (£1,000,000) whichever is the lower; and
  - (c) The terms implied by sections 13, 14 and 15 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
- 8.3 This clause 8 shall survive termination of this Agreement.

## 9. Termination

- 9.1 Without limiting its other rights or remedies, each party shall have the right to terminate this Agreement by giving the other party written notice in accordance with the schedules attached.
- 9.2 Without limiting its other rights or remedies, each party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits repeated material breaches of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with its having the intention or ability to give effect to the terms of this Agreement and (if such breaches are remediable) fails in all respects to remedy those breaches within thirty (30) days of that party being notified in writing giving full particulars of the breaches and the solutions sought, with both parties cooperating and acting reasonably and in good faith in seeking to remedy those breaches;
  - (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
  - (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (other than for the purpose of a scheme for a solvent amalgamation or reconstruction).
  - (d) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company).
  - (e) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - (f) any event occurs, or proceeding is taken with respect to the other party (whether an individual, partnership or company) in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in 9.1 (a) to (e) (inclusive).
- 9.3 Without limiting Our other rights or remedies, We shall have the right to suspend provision of the Services under this Agreement or any other contract between You and Us if You become subject to any of the events listed in clause 9.1(a) to (e) (inclusive), or We reasonably believe that You are about to become subject to any of them, or if You fail to pay any amount due under this Agreement on any Due Date.

## 10. Consequences of termination

- 10.1 On termination of this Agreement for any reason:
- (a) You shall immediately pay to Us all of Our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, We shall submit an invoice, which shall be payable by You immediately on receipt.
  - (b) You shall at our option return, destroy or irretrievably delete any Deliverables which have not been fully paid for and provide a signed statement that You have fully comply with Your obligations in this respect.

- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of Your agreement with Us which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 11. Dispute resolution procedure.

- 11.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the directors of both parties (equal in number) shall attempt in good faith to resolve the Dispute.
  - (b) if the directors are for any reason unable to resolve the Dispute within 20 working days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 25 days of service of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR.
  - (c) if there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within 5 working days from the date of the ADR notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them; and
  - (d) unless otherwise agreed between the parties, the mediation will start not later than 20 working days after the date of the ADR notice.
- 11.2 No party may commence any court proceedings in relation to the whole or part of the Dispute until 60 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

## 12. General

- 12.1 **Force majeure:** We shall not be liable to You as a result of any delay or failure to perform Our obligations under this Agreement as a result of any event beyond Our reasonable control including the default of Our subcontractors. If any such event prevents Us from providing any of the Services for more than four weeks, We shall, without limiting Our other rights or remedies, have the right to reasonably extend any deadlines or terminate this Agreement immediately by giving written notice to You.
- 12.2 **Assignment and subcontracting:** We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of Our rights under this Agreement and may subcontract or delegate in any manner any or all of Our obligations under this Agreement to any third party or agent. Neither party shall, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, subcontract or deal in any other manner with all or any of Your rights or obligations under this Agreement.
- 12.3 **Non-solicitation:** Neither party shall employ, offer employment to, or work of any kind with any employee of the other party without prior written consent during the continuance of this Agreement and for a period of 6 months thereafter. You shall not, without our prior written consent, at any time from the date of this Agreement to the expiry of 12 months after the termination of this Agreement, directly or indirectly solicit, or entice away from Us, or employ, or attempt to employ any person who is, or has been, engaged as an employee, worker or independent contractor in the provision of the Services. If you commit any breach of this clause, you shall on demand pay to Us a sum equal to one year's basic salary, or the annual fee

that was payable by Us, to that employee, worker or independent contractor, plus the recruitment costs incurred by Us in replacing such person.

- 12.4 **Notices:** Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by email. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, on the next Business Day after transmission. This clause 11.4 shall not apply to the service of any proceedings or other documents in any legal action.
- 12.5 **Waiver:** No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 12.6 **Severance:** If a court or any other competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.7 **No partnership:** Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.8 **Third parties:** A person who is not a party to this Agreement shall not have any rights under or in connection with it under the Contract (Rights of Third Parties) Act 1999.
- 12.9 **Variation:** Except as set out in this Agreement, any variation, including the introduction of any additional terms and conditions, to this Agreement, shall only be binding when agreed in writing and signed by both You and Us.
- 12.10 **Governing law and jurisdiction:** This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

# Schedule 2: Childcare Voucher Scheme

**The Service:** Amba shall establish, manage and control the CCV Online Scheme and shall be responsible for all costs and charges incurred from time to time in connection with such establishment and operation of the Scheme. Employees in the Scheme will have a secure online account with their own username and password. Vouchers will be issued to the accounts based on orders provided by the Employer. Employees can access their account and make online payments to the selected approved childcare providers. Amba has obtained legal and financial advice in relation to this Agreement and the Scheme before entering into this Agreement. The Employer acknowledges and agrees that it has had the opportunity to obtain independent legal and financial advice in relation to this Agreement and Amba shall have no liability to the Employer by reason of the Employer's failure to do so. The Scheme operates as a salary exchange scheme and the Employer undertakes to operate this scheme in accordance with the rules.

**Operation of the Service:** The Employer will upload the voucher order to the platform at least 7 days before the date that the vouchers are released to Employees (release date). Amba People Limited will issue an Order Receipt; via a platform generated email, to the primary contact only once the order is placed, confirming the order amount. The Employer must pay this amount to Amba People Limited no later than one working day before the release date of the vouchers. Amba People Limited will not release the vouchers until payment has been received in full. Vouchers will be issued to Employees, electronically, on the release date providing full payment received from the Employer. Employees will login to their account and request payment to their Provider. The request will be picked up the next working day and Providers should receive the payment within 3-5 working days. Childcare Providers must be registered with Amba People Limited and Ofsted (or equivalent) in order to receive payments.

An administration fee of £25 + VAT will be charged for any amendments made to orders already placed or for additional administration outside of the usual monthly processing.

**Voucher Expiry:** Vouchers will remain in the Employees account, providing they stay in the childcare voucher scheme. Employees must make at least 1 salary sacrifice payment into their Childcare Voucher account in each 52 week period to remain eligible, failure to do so will result in them being processed as a scheme leaver. If an Employee leaves the scheme and is still employed, the vouchers will expire after 18 months. If an Employee leaves the Company, it is the responsibility of the Employer to notify Amba People Limited and provide their last date of employment, and the vouchers will expire 18 months from the leave date.

**Refunds:** No refunds of vouchers will be allowed under the scheme.

**Transfers:** No transfers of vouchers in or out of the Childcare Account will be allowed.

**Termination:** Should this agreement be terminated for any reason vouchers will be honoured for a period of 6 months at an admin and hosting fee of £150 per month from termination however, if your employees require additional time to use up any balances, then an admin and hosting fee of £150 per month will be charged for a further 6 months (for a maximum of 12 months from termination). Should vouchers not be used in this period any funds related to these vouchers will become the property of Amba People Limited.