

**BLOSSOM EDUCATIONAL LIMITED**  
**AGREEMENT FOR SOFTWARE USE**  
**(B) Conditions**

**1. Interpretation**

The definitions and rules of interpretation in this clause apply in this agreement.

**Agreement Sheet:** a summary of the agreement between the Customer and Blossom

**Authorised Users:** those parents, employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services.

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

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 9.6 or clause 9.7.

**Customer Data:** the data inputted by the Customer, Authorised Users, or Blossom on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

**Data Protection Legislation:** up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter:

- a) unless and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then
- b) any successor legislation to the GDPR or the Data Protection Act 1998.

**Documentation:** Blossom's documents made available to the Customer by Blossom in hard copy, via email, or online or such other web address notified by Blossom to the Customer from time to time.

**Normal Business Hours:** 9.00 am to 6.00 pm local UK time, each Business Day.

**Policies:** any of Blossom's policies provided to the Customer, as amended by notification to the Customer from time to time.

**Services:** The on-line accessed software, and where chosen the parent app, for Blossom's Early Years Setting for the purpose of nursery administration and child assessment in accordance with the chosen Subscription Plan (as set out in the Agreement Sheet).

**Software:** the online software applications provided by Blossom as part of the Services.

**Subscription Start Date:** the date that the Services will commence, as set out in the Agreement Sheet.

**Subscription Term:** the term of the agreement, as set out in Agreement Sheet.

**Subscription Fees** – the subscription fees payable by the Customer to Blossom for the Services, as set out in the Agreement Sheet and any training costs (if applicable)

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

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

Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.

A reference to writing or written includes e-mail.

References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

## **2. User subscriptions**

2.1 Subject to the Customer purchasing the Services, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, Blossom hereby grants to the Customer and Authorised Users a non-exclusive, non-transferable right, without the right to grant sublicences, to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

2.2 In relation to the Authorised Users, the Customer undertakes that each Authorised User shall keep a secure password for his use of the Services, and that each Authorised User shall keep his password confidential;

2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and Blossom reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's and any Authorised Users' access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

- (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - (b) access all or any part of the Services in order to build a product or service which competes with the Services and/or the Documentation; or
  - (c) use the Services and/or Documentation to provide services to third parties; or
  - (d) subject to clause 19.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
  - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; and
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Blossom.
- 2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

### **3. Services**

- 3.1 Blossom shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 3.2 Blossom shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 9.00 pm to 4.00 am UK time; and
  - (b) unscheduled maintenance performed outside Normal Business Hours, provided that Blossom has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 3.3 Blossom will, where provided as part of the Services, provide the Customer with Blossom's standard customer support services during Normal Business.

### **4. Customer data**

- 4.1 The Customer shall own all rights, title and interest in and to all of the Customer Data including any personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

- 4.2 Blossom shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 4.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 4.4 The parties acknowledge that:
- (a) if Blossom processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the data controller and Blossom is the data processor for the purposes of the Data Protection Legislation (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).
  - (b) the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and Blossom's other obligations under this agreement.
- 4.5 Without prejudice to the generality of clause 4.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Blossom for the duration and purposes of this agreement so that Blossom may lawfully use, process and transfer the Personal Data in accordance with this agreement on the Customer's behalf.
- 4.6 Without prejudice to the generality of clause 4.3, Blossom shall, in relation to any Personal Data processed in connection with the performance by Blossom of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Customer unless Blossom is required by the laws of any member of the European Union or by the laws of the European Union applicable to Blossom to process Personal Data (**Applicable Laws**). Where Blossom is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Blossom shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Blossom from so notifying the Customer;
  - (b) not transfer any Personal Data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
    - (i) the Customer or Blossom has provided appropriate safeguards in relation to the transfer;
    - (ii) the data subject has enforceable rights and effective legal remedies;

- (iii) Blossom complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (iv) Blossom complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - (c) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (d) notify the Customer without undue delay on becoming aware of a Personal Data breach;
  - (e) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
  - (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 4.
- 4.7 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 4.8 Either party may, at any time on not less than 30 days' notice, revise this clause 4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## **5. Blossom's obligations**

- 5.1 Blossom undertakes that the Services will be performed with reasonable skill and care.
- 5.2 The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Blossom's instructions, or modification or

alteration of the Services by any party other than Blossom or Blossom's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Blossom will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1. Notwithstanding the foregoing, Blossom:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

5.3 This agreement shall not prevent Blossom from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

5.4 Blossom warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

## **6. Customer's obligations**

The Customer shall:

- (a) provide Blossom with:
  - (i) all necessary co-operation in relation to this agreement; and
  - (ii) all necessary access to such information as may be required by Blossom; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Blossom may adjust any agreed timetable as reasonably necessary;

- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Blossom, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by Blossom (if any) from time to time; and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Blossom's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## **7. Charges and payment**

7.1 The Customer shall pay the Subscription Fees to Blossom in accordance with the Agreement Sheet and this clause 7.

Providing the Customer has not cancelled the agreement within the 14 day cooling off period, the Customer shall pay the Subscription Fee.

7.2 If Blossom has not received payment within 14 days after the due date set out in the Agreement Sheet, and without prejudice to any other rights and remedies of Blossom:

- (a) Blossom may, without liability to the Customer, disable the Customer's any Authorised User's password, account and access to all or part of the Services and Blossom shall be under no obligation to provide any or all of the Services while the payment remains unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Barclays Bank PLC in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

7.3 All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in pounds sterling;
- (b) are, non-refundable;
- (c) are exclusive of value added tax.



## **8. Proprietary rights**

- 8.1 The Customer acknowledges and agrees that Blossom and/or its licensors own all intellectual property rights in the Services. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services .
- 8.2 Blossom confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

## **9. Confidentiality and compliance with policies**

- 9.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 9.2 Subject to clause 9.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 9.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 9.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 9.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 9.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 9.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Blossom's Confidential Information.
- 9.7 Blossom acknowledges that the Customer Data is the Confidential Information of the Customer.
- 9.8 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 9.9 The above provisions of this clause 9 shall survive termination of this agreement, however arising.
- 9.10 In performing its obligations under this agreement, the Customer shall comply with the policies notified to it from time to time.

## **10. Indemnity**

- 10.1 The Customer shall defend, indemnify and hold harmless Blossom against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
  - (b) Blossom provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (c) the Customer is given sole authority to defend or settle the claim.
- 10.2 Blossom shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Subscription Start Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) Blossom is given prompt notice of any such claim;
  - (b) the Customer provides reasonable co-operation to Blossom in the defence and settlement of such claim, at Blossom's expense; and
  - (c) Blossom is given sole authority to defend or settle the claim.

- 10.3 In the defence or settlement of any claim, Blossom may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 10.4 In no event shall Blossom, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than Blossom; or
  - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Blossom; or
  - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Blossom or any appropriate authority.
- 10.5 The foregoing and clause 13 states the Customer's sole and exclusive rights and remedies, and Blossom's (including Blossom's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **11. Limitation of liability**

- 11.1 Except as expressly and specifically provided in this agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Blossom shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Blossom by the Customer in connection with the Services, or any actions taken by Blossom at the Customer's direction;
  - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
  - (c) the Services and the Documentation are provided to the Customer on an "as is" basis.
- 11.2 Nothing in this agreement excludes the liability of Blossom:
- (a) for death or personal injury caused by Blossom's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 11.3 Subject to clause 11.1 and clause 11.2:

- (a) Blossom shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) Blossom's total aggregate liability in contract (including in respect of the indemnity at clause 10.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fee paid during the 12 months immediately preceding the date on which the claim arose.

## **12. Term and termination**

12.1 This agreement shall, unless otherwise terminated as provided in this clause 12, commence on the Subscription Start Date and shall continue for the Subscription Term, unless:

- (a) the Customer notifies Blossom it no longer wishes to use the Services in which case the entire Subscription Fee for the Subscription Term becomes payable within 10 Business Days.
- (b) the Customer terminates the agreement by notice in writing within 14 days (cooling off period) of the Subscription Start Date and in which case no Subscription Fee is payable.
- (c) otherwise terminated in accordance with the provisions of this agreement;

12.2 Without affecting any other right or remedy available to it, Blossom may terminate this agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
- (b) the Customer commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
- (c) the Customer repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the Customer 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 is deemed unable to pay its debts within the meaning of section 123 of the

Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

- (e) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) 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 the Customer other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of that other party;
- (g) 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 Customer;
- (h) the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- (j) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(d) to clause 14.2(j) (inclusive);
- (l) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

12.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (b) the Customer shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to Blossom;
- (c) Blossom may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with clause 5.7(c), unless Blossom receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up

of the Customer Data. Blossom shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Blossom in returning or disposing of Customer Data;

- (d) the Customer shall pay to Blossom the total Subscription Fee due for the remainder of the Subscription Term within 10 Business Days; and
- (e) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

### **13. Force majeure**

Blossom shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Blossom or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Blossoms or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

### **14. Variation**

No variation of this agreement shall be effective unless it is in writing and agreed by the parties (or their authorised representatives). For the avoidance of doubt the parties may agree a variation by email.

### **15. 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **16. Rights and remedies**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **17. Severance**

17.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

17.2 If any provision or part-provision of this agreement is deemed deleted under clause 17.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **18. Entire agreement**

18.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

18.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

18.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **19. Assignment**

19.1 The Customer shall not, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

19.2 Blossom may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

## **20. No partnership or agency**

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any

way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **21. Third party rights**

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **22. Notices**

22.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in the Agreement Sheet, unless otherwise notified.

22.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission.

## **23. Governing law**

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 the law of England and Wales.

## **24. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).