

**BLUM SERVICES
AGREEMENT**

TERMS AND CONDITIONS

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AGREED TERMS

1 INTERPRETATION

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

Acceptance Date: the date on which the Blum Software is accepted (or deemed accepted) in accordance with clause 6.7.

Acceptance Testing: shall have the meaning given to it in clause 6.1.

Affiliate: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

Bespoke Software: software programs developed by Blum specifically for the Customer as part of Blum Software and listed in Part 2 of Schedule 1 of the SOW.

Blum Software: Blum Standard Software, the Third-Party Software, the Modified Software, the Open-Source Software, the Tools and the Bespoke Software.

Blum Standard Software: the software programs proprietary to Blum, listed in the SOW, which are to be provided to the Customer without modification.

Change: an amendment to:

- (i) the scope, nature, volume or execution of the Services and/or Work under this agreement; or
- (ii) any other term or schedule of this agreement.

Change Control Note: the written record of any Change agreed or to be agreed by the parties pursuant to the change control procedure in clause 9.

Commencement Date: the date on which this agreement has been signed by both parties.

Completion Date: the estimated date specified in the Implementation Plan (which may be varied in accordance with clause 7) by which Blum is to provide Blum Software Ready for Service.

Confidential Information: information of commercial value, in whatever form or medium, disclosed by the party to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing and marketing and, for clarity, including (in the case of Blum's information) information relating to the Application, Blum Software or any of its constituent parts, the Source Code relating to Blum Software or any such parts.

Contract Details: the covering pages of this agreement identified as such and which set out the commercial details specific to this agreement.

Contract Year: any 12-month period ending on any anniversary of the Commencement Date.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression and **controls**, **controlled** and the expression **change of control** shall be construed accordingly.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer Equipment: the computers and other equipment to be used by the Customer in conjunction with Blum Software, as specified in the Technical Specification.

Customer Materials: any information or material that is provided by or on behalf of the Customer to Blum in connection with the Work carried out under this agreement.

Customer Representative: a person duly authorised by the Customer to act on its behalf for the purposes of this agreement and identified to Blum by written notice from the Customer.

Cybersecurity Laws: all applicable laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions relating to security of network and information systems and security breach and incident reporting requirements, including the Data Protection Legislation, the Cybersecurity Directive (EU) 2016/1148, Commission Implementing Regulation (EU) 2018/151, the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner's Office or other relevant regulatory authority and applicable to a party.

Defect: an error in the Supported Software that causes it to fail to operate substantially in accordance with the relevant Documentation.

Development Fees: the fees for development and implementation provided under this agreement, as specified in Part 1 of Schedule 3 of the SOW.

Dispute Resolution Procedure: the procedure for dealing with disputes under this agreement as set out in clause 37.

Documentation: the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by Blum as specified in Part 3 of Schedule 1 of the SOW.

Fees: the fees payable by the Customer under this agreement in consideration of the Work and the Services, including any Development Fees, Licence Fees, Support Fees, and/or any fees charged for Training.

Good Industry Practice: the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

Implementation Plan: the time schedule and sequence of events for the performance of this agreement set out in Part 2 of Schedule 2 of the SOW, which may be varied in accordance with clause 7.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database

rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, including the right to sue for and recover damages for past infringements.

Licences: the licences granted under clause 11.

Licence Fees: the fees for the Licences granted under this agreement, as specified in Schedule 3 of the SOW.

Licensed Software: Blum Software as specified in the SOW (except the Open-Source Software and the Third-Party Software) and all subsequent amendments and updates to, or new versions of, such Blum Software as may be provided under this agreement.

Mandatory Policies: the Customer's and/or Blum's relevant business policies as attached and/or listed in the Contract Details, as may be amended by notification to the other party from time to time.

Modified Software: the standard software programs proprietary to Blum and/or third parties listed in the SOW, modified or to be modified by Blum under this agreement.

Modified Software (Blum): those elements of the Modified Software listed in the SOW and identified as such.

Modified Software (Third Party): those elements of the Modified Software listed as Third Party in the Statement Of Work and identified as such.

New Release: a new release of all or any part of the Supported Software suitable for use by the Customer in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added.

New Version: a new version of the Licensed Software released by Blum after the Acceptance Date which provides additional or improved functionality or performance.

Normal Working Hours: the hours 9am to 5pm GMT, Monday to Friday, except English Bank Holidays.

Open-Source Software: open-source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>).

Project Manager: Blum employee who has overall responsibility for the Work.

Ready for Service: installed, tested and having passed or deemed to have passed the Acceptance Tests under clause 1.

Services: the services to be provided by Blum under this agreement, including the Support Services and any data migration agreed between the parties in writing.

Software Delivery Date: the estimated delivery date specified in the Implementation Plan on which Blum will deliver a Software Module to the Customer.

Software Module: any one of the individual software programs in Blum Software.

Source Code: the source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation, all of a

level sufficient to enable the Customer's development personnel to understand, develop and maintain that software.

SOW the Statement of Works annexed to this agreement and the Master Service Agreement.

Supplied Software: the software to be provided by Blum to the Customer under this agreement, as specified in the SOW.

Support Commencement Date: The Acceptance Date or such other date as may be specified in the SOW.

Support Fees: the annual support charges, as specified in a separate Service Level Agreement

Support Services: the support and maintenance services to be provided by Blum under this agreement in accordance with clause 14.

Supported Software: those Blum Software programs listed as Supported Software in a separate Service Level Agreement and all subsequent amendments and updates to and New Releases of such programs.

Support Staff: those officers, employees, agents or subcontractors of Blum connected with this agreement, including those individuals who perform Blum's obligations under this agreement.

Technical Specification: the detailed specification of Blum Software contained in Schedule 2 of the SOW and agreed between Blum and the Customer to meet the Customer's business requirements.

Term: the duration of this agreement as set out in Contract Details.

Terms and Conditions: these terms and conditions which form part of the agreement between Blum and the Customer,.

Test Data: shall have the meaning given to it in clause 6.1.

Test Results: shall have the meaning given to it in clause 6.1.

Third-Party Licences: the licences (including open-source licences) applicable to the Third-Party Software, as notified or made available to the Customer.

Third-Party Software: the software programs proprietary to third parties, listed in the SOW, which are to be provided to the Customer without modification.

Tools: any tools and know-how developed, and methods invented, by Blum in the course of or as a result of carrying out the Work, whether or not developed or invented specifically or used exclusively to carry out the Work.

Training: the training as specified in the SOW, to be provided by Blum as part of the Services.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

Virus: any device or computer code that:

- (i) is intentionally designed to disrupt, disable, harm, or otherwise impeded in any manner, including aesthetic disruptions or distortions, the operation of the Blum Software, or any other associated hardware, software, firmware, computer system or network; or
- (ii) would disable the Blum Software or impair in any way its operation based on the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral; or
- (iii) would permit the Customer or any subcontractor to access the Blum Software to cause such disablement or impairment, or which contains any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning; or
- (iv) would damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations.

Vulnerability: any weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

Work: all the works, duties and obligations to be carried out by Blum under this agreement.

- 1.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.6 Except where a contrary intention appears, a reference to a clause or schedule is a reference to a clause of, or schedule to, this agreement.
- 1.7 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.8 **Writing** or **written** includes email.
- 1.9 The schedules to this agreement, together with any documents referred to in them, form an integral part of this agreement. Any reference to this agreement means this agreement together with the schedules and all documents referred to in them, and such amendments in writing as may subsequently be agreed between the parties.
- 1.10 If any conflict arises between the terms and conditions of this agreement and any provision of any schedule, the terms and conditions of the schedule shall prevail.
- 1.11 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

2 SCOPE

- 2.1 Subject to the terms and conditions set out in this agreement, Blum grants the Licences and shall supply the Blum Software, the Documentation and the Services to the Customer in accordance with this agreement.

3 SOFTWARE AND DOCUMENTATION

- 3.1 Blum shall carry out the Work with reasonable skill and expertise, to use its reasonable endeavours to provide Blum Software in accordance with the Technical Specification by the Completion Date.
- 3.2 Where necessary, Blum shall provide the Third-Party Software and any Modified Software (Third Party) to the Customer under the standard licence terms provided by the relevant third parties, copies of which shall be provided to the Customer, and the Customer agrees to be bound to the relevant third parties by such licence terms.
- 3.3 Blum shall provide the Blum Software under the terms of this agreement.
- 3.4 Blum shall provide to the Customer, from time to time, copies of the Documentation containing up-to-date information for the proper use of the Blum Software. Such Documentation may be supplied in electronic form.
- 3.5 The Customer may make such further copies of the Documentation as are reasonably necessary for the use of the Blum Software and for training the Customer's personnel in use of the Blum Software. The Customer shall ensure that all of Blum's proprietary notices are reproduced in any such copy.
- 3.6 The Customer may provide copies of the Documentation to any third party who needs to know the information contained in it, provided that such third party first enters into a confidentiality obligation in accordance with clause 19.

4 SERVICES

- 4.1 Blum shall provide the Services to the Customer in accordance with the SOW. Where the parties have agreed in the Contract Details that additional optional Services shall be provided, Blum shall provide such Services in accordance with the terms set out in the relevant elements of the SOW.
- 4.2 Blum shall where applicable under the Contract Details develop the Bespoke Software and make the modifications to the Modified Software in accordance with the requirements of the Technical Specification in all material respects.
- 4.3 Blum agrees:
- 4.3.1 to deliver the Blum Software in accordance with clause 5;
 - 4.3.2 to carry out, in conjunction with the Customer, the Acceptance Tests; and
 - 4.3.3 Subject to clause 7.3, use its reasonable endeavours to provide Blum Software Ready for Service by the Completion Date,
- on the terms and conditions set out in this agreement.

5 DELIVERY, ACCEPTANCE AND INSTALLATION

- 5.1 Subject to clause 7.3, Blum shall use its reasonable endeavours to deliver each Software Module to the Customer by the applicable Software Delivery Date.

- 5.2 Before delivering any item of Blum Standard Software or Third-Party Software to the Customer, Blum shall carry out reasonable tests to ensure that such item is in operable condition and is capable of meeting the requirements of the Technical Specification once properly installed.
- 5.3 The Customer shall, at its own expense, be responsible for ensuring that the Customer Equipment is installed, is in working order, and is ready for installation of the Software Module in accordance with, and no later than, the relevant date specified in the Implementation Plan.
- 5.4 If any delivery is delayed at the request of the Customer, or because of their acts or omissions, the Implementation Plan shall be amended to take account of such delay in accordance with clause 7.5. If Blum can demonstrate that the delay has resulted in an increase in cost to Blum of carrying out its obligations under this agreement, Blum may, at its sole discretion, notify the Customer that it wishes to increase the Fees by an amount not exceeding any such demonstrable cost. Blum may invoice the Customer for any additional monies that become payable in this way, within 30 days of demonstrating the increase in costs.

6 ACCEPTANCE TESTS

- 6.1 For initial internal testing of the Software Blum will carry out its own testing with draft data (or if agreed the Customer shall supply its own non-specific data) (**Draft Test Data**) to Blum suitable to test whether the Software operates in accordance with the Specification together with the results (**Draft Test Results**) it would reasonably expect to be achieved by processing the Draft Test Data using the Software.
- 6.2 Provided that Blum is satisfied that the Software has passed the internal testing process set out in clause 6.1 above Blum will deliver the Software to the Customer for it to carry out its own formal testing on its own data. The Customer shall prior to installation supply data (**Test Data**) to Blum suitable to test whether the Software operates in accordance with the Specification (**Acceptance Testing**) together with the results (**Test Results**) it reasonably expects to be achieved by processing the Test Data using the Software.
- 6.3 If Blum can show the Customer that the Test Data or Test Results are not suitable for Acceptance Testing, the Customer shall make such amendments to the Test Data and Test Results as Blum may reasonably request and provide the amended versions to Blum within seven days of the request.
- 6.4 Within seven days of receipt of the Software together with suitable Test Data and Test Results, the Customer shall carry out Acceptance Testing and shall give Blum at least 24 hours' notice of the start of the Acceptance Testing, and permit Blum to observe all or any part of the testing.
- 6.5 If any Software Module fails to pass the Acceptance Testing (through either a bug or code defect), the Customer shall, within seven days from the completion of the Acceptance Testing or any part of these tests, provide a written notice to this effect to Blum's project manager, giving details of such failure(s). Blum shall remedy the defects and/or deficiencies and the relevant test(s) shall be repeated by the Customer within a reasonable time.
- 6.6 If any Software Module fails in some material respect to pass any repeated Acceptance Testing within 12 weeks from the date of its second submission to the Acceptance Testing, then the Customer may, by written notice to Blum, choose at its sole discretion:
 - 6.6.1 to fix (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the Software Module on the same terms and conditions. If the Software Module fails such further tests then the Customer may request a repeat test under this clause 6.6;
 - 6.6.2 to permit installation of the Software Module subject to such change of acceptance criteria, amendment of the Technical Specification and/or reduction in the Fees as, after taking into account all the relevant circumstances, is reasonable; or

- 6.6.3 if Blüm is unable to correct material defects within a period of six months from the commencement of Acceptance Testing under clause 6.4, to reject Blüm Software as not being in conformity with the agreement, in which event the Customer may terminate this agreement.
- 6.7 The Customer shall be deemed to have accepted the Blüm Software upon the earliest of the following:
 - 6.7.1 the Acceptance Testing for the final Software Module is certified by Blüm to be successful;
 - 6.7.2 the expiry of five days after the completion of all the Acceptance Testing, unless the Customer has given any written notice under clause 6.5;
 - 6.7.3 the Customer fails to provide the Test Data and Test Results within either of the time limits set out in clause 6.3 and clause 6.4 (as to which time shall be of the essence); or
 - 6.7.4 the Customer commences operational use of the Software Module.

7 IMPLEMENTATION PLAN AND EXTENSION OF TIME

- 7.1 Both parties shall use their reasonable endeavours to perform their obligations under this agreement in accordance with the Implementation Plan.
- 7.2 Blüm shall use its reasonable endeavours to complete the Work in each stage of the Implementation Plan by the date specified in the Implementation Plan, subject to clause 7.3.
- 7.3 Blüm shall be given an extension of the timetable of any one or more of the stages in the Implementation Plan, or any of its other performance obligations under this agreement, if one or more of the following events occurs:
 - 7.3.1 a variation to Blüm Software is made at the Customer's request under the change control procedures set out in clause 9;
 - 7.3.2 a force majeure event occurs as described in clause 36;
 - 7.3.3 a delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third-party contractors.
- 7.4 If Blüm is entitled to an extension of time under clause 7.3, it shall give written notice to the Customer after the beginning of the event. Such notice shall specify the event relied on and, in the case of a force majeure event under clause 36, shall estimate the probable extent of the delay.
- 7.5 The Customer Representative and the Project Manager shall use best endeavours to agree in writing, signed by both parties, what extension of time is reasonable in the circumstances. The Implementation Plan, or performance obligation, shall be deemed amended accordingly.

8 PAYMENT

- 8.1 Blüm may invoice the Customer in respect of the Development Fees as agreed and set out in the Implementation Plan.
- 8.2 Blüm may invoice the Customer in respect of the Licence Fees as set out in the SOW or where the SOW does not set out the detail, on a monthly basis in arrears, commencing from the Acceptance Date.

- 8.3 The Customer shall make payment of each invoice by the due date stated in that invoice or within 30 days of receipt of the invoice, whichever is later.
- 8.4 The Customer shall pay the Support Fees on the Support Commencement Date and on each anniversary of that date. Blum shall invoice the Customer for the Support Fees no later than 30 days before any anniversary of the Support Commencement Date at the invoicing address specified in the SOW.
- 8.5 The Fees and all other payments stated in the SOW are net of tax. The Customer shall, in addition, pay to Blum the amount of any tax, duty or assessment, including any applicable VAT, which Blum is obliged to pay and/or collect from the Customer in respect of any supply under the agreement (other than tax on Blum's income).
- 8.6 If the Customer fails to make any payment due to Blum under this agreement by the due date for payment, then, without limiting Blum's remedies under clause 27, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.7 Blum may increase the annual charge at any anniversary of the Support Commencement Date after the first such anniversary by giving the Customer at least three months' notice before such anniversary unless otherwise agreed in the SOW.

9 CHANGE CONTROL

- 9.1 Either party may submit a written request for Change to the other party in accordance with this clause 9, but no Change will come into effect until a Change Control Note has been signed by the authorised representatives of both parties.
- 9.2 If the Customer requests a Change:
- 9.2.1 the Customer will submit a written request to Blum containing as much information as is necessary to enable Blum to prepare a Change Control Note; and
 - 9.2.2 within 14 days of receipt of a request, Blum will, unless otherwise agreed, send to the Customer a Change Control Note.
- 9.3 If Blum requests a Change, it will send to the Customer a Change Control Note.
- 9.4 A Change Control Note must contain sufficient information to enable the Customer to assess the Change, including as a minimum:
- 9.4.1 the title of the Change;
 - 9.4.2 the originator of the Change and date of request;
 - 9.4.3 description of the Change;
 - 9.4.4 details of the effect of the proposed Change on:
 - 9.4.4.1 the Services and/or the Blum Software;
 - 9.4.4.2 the Fees;
 - 9.4.4.3 any systems or operations of the Customer which communicate with, or are otherwise affected by, the Services; and

- 9.4.4.4 any other term of this agreement;
 - 9.4.5 the date of expiry of validity of the Change Control Note; and
 - 9.4.6 provision for signature by the Customer and Blum.
- 9.5 If, following the Customer's receipt of a Change Control Note pursuant to clause 9.2 or clause 9.3:
 - 9.5.1 the parties agree the terms of the relevant Change Control Note, they will sign it and that Change Control Note will amend this agreement;
 - 9.5.2 either party does not agree to any term of the Change Control Note, then the other party may refer the disagreement to be dealt with in accordance with the Dispute Resolution Procedure.
- 9.6 Each party will bear its own costs in relation to compliance with this change control procedure.
- 10 PROPRIETARY RIGHTS**
- 10.1 The Customer acknowledges and agrees that, subject to clause 10.4, Blum and/or its licensors own all Intellectual Property Rights in the Blum Software, the Services, the Documentation and in all other materials connected with the Services and/or developed or produced in connection with this agreement by Blum, its officers, employees, sub-contractors or agents. Except as expressly stated, this agreement does not grant the Customer or any user any right, title or interest in or to the Intellectual Property Rights in the Blum Software, the Services, or the Documentation.
- 10.2 Unless outlined on mutual agreement within a Master Service Agreement or Statement of Work, Blum will assign to the Customer, title to and all present and future rights and interest in the Project-Specific foreground IPR, or shall procure that the first owner of the Project-Specific IPR assigns them to the Customer on the same basis.
- 10.3 The Customer acknowledges and understands that any Licensed Software, the Services and the Documentation contain confidential and proprietary information and it shall not conceal, modify, remove, destroy or alter in any way any proprietary markings of Blum on or in relation to the same, nor shall it use any branding of Blum without its prior written approval (such approval not to be unreasonably withheld).
- 10.4 Blum acknowledges and agrees that the Customer (or its licensors) owns and retains all rights, title and interest in and to the Customer Materials. Except as expressly stated, this agreement does not grant Blum or any user any right, title or interest in or to the Intellectual Property Rights in the Customer Materials.
- 10.5 All goodwill arising from use of a party's trade mark shall accrue to the party owning such trade mark.
- 10.6 Where either party acquires, by operation of law, title to any Intellectual Property Rights of the other referred to in this clause 10, and this acquisition is inconsistent with the allocation of title set out in this clause 10, such Intellectual Property Rights shall be assigned by it to the other party on the request of the other party, whenever that request is made.
- 10.7 The Customer shall not infringe, and shall use reasonable endeavours to prevent any user or third party from infringing, Blum's Intellectual Property Rights in the Licensed Software and shall promptly report to Blum any such infringement that comes to its attention. In particular, the Customer shall:

- 10.7.1 ensure that each user, before starting to use the Licensed Software, is made aware that the Licensed Software is proprietary to Blüm and that it may only be used and copied in accordance with this agreement;
- 10.7.2 implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Licensed Software, except as provided for in clause 12.1; and
- 10.7.3 not permit third parties to have access to the Licensed Software without the prior written consent of Blüm, who may require that such third party executes a written confidentiality agreement before being given access to the Licensed Software.

11 GRANT OF LICENCES

11.1 With reference to the Blüm Software, Blüm hereby grants to the Customer:

- 11.1.1 a non-transferable, non-exclusive, royalty-free licence to use the Blüm Software and the Documentation solely in connection with the Customer's internal business purposes in accordance with this agreement during the term of this agreement.
- 11.2 The Customer hereby grants to Blüm a, sub-licensable, non-transferable, non-exclusive, royalty-free licence for the term of this agreement to carry out any acts that would otherwise be restricted by any of the Customer's Intellectual Property Rights in the Customer Materials for the sole purpose of enabling Blüm to carry out the Work in accordance with this agreement.
- 11.3 Each party reserves all rights not expressly granted in this agreement.
- 11.4 The Customer shall comply with the Third-Party Licences and shall indemnify and hold Blüm harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of such terms howsoever arising.
- 11.5 Blüm may treat the Customer's breach of any Third-Party Licence as a breach of this agreement.

12 TRANSFER OR REPRODUCTION OF LICENSED SOFTWARE

- 12.1 The Customer may make such copies of the Licensed Software as are reasonably necessary for use in accordance with this agreement and for the purposes of backup and security. The Customer has no right to make, or authorise the making of, any other copies of the Licensed Software.
- 12.2 Blüm shall at all times own all copies of all or any part of the Licensed Software. For copies recorded on a tangible medium, the Customer shall place on each copy of all or any part of the Licensed Software a clearly visible label indicating that the copy is the property of Blüm, and reproducing Blüm's proprietary rights notice. For electronic copies, the Customer shall ensure that all proprietary notices contained in the Licensed Software shall be maintained in such copies and shall display when the software is run, in the same way as in the case of the Licensed Software as supplied by Blüm. The Customer shall keep all copies of the Licensed Software in a secure place when not in use and shall, at all times, keep all such copies in its possession or control.
- 12.3 The Customer shall not:
 - 12.3.1 sub-license, rent, lend, assign or transfer in any other way this agreement or the Licensed Software to any person without the prior written consent of Blüm; and
 - 12.3.2 give access to the Licensed Software through any network of computers to users who are not employees or agents of the Customer.

13 USE AND ADAPTATION OF LICENSED SOFTWARE

- 13.1 The Customer may use the Licensed Software with other software.
- 13.2 The Customer may not make adaptations or variations of the Licensed Software without the prior consent of Blüm.
- 13.3 The Customer may not disassemble, decompile, reverse translate or in any other manner decode the Licensed Software, except as permitted by law.

14 SUPPORT SERVICES

- 14.1 Unless otherwise agreed, Blüm will, as part of the Services and in consideration of the support fees set out in the SOW, provide the Customer with the Blüm's standard customer support services during Normal Working Hours in accordance with this clause 14. Blüm may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase additional support services separately at Blüm's then current rates, and if selected and agreed in the Contract Details, the details of such services shall be agreed between the parties and set out in the SOW.
- 14.2 Blüm shall ensure that support is available by telephone and e-mail during Normal Working Hours to provide assistance to the Customer in respect of the following:
 - 14.2.1 remedying Defects in the Supported Software; and
 - 14.2.2 providing advice on the use of the Supported Software.
- 14.3 Blüm shall use reasonable endeavours to correct Defects notified to it by the Customer in a timely manner appropriate to the seriousness of the circumstances in accordance with the following procedure:
 - 14.3.1 the Customer shall promptly notify Blüm of all Defects. Where such notification is made orally, the Customer shall provide written confirmation (which may be sent by e-mail) of the notification within two business days. The parties agree that non-urgent issues will be reported by email only and that issues requiring an urgent response will be notified by telephone (and followed by confirming email);
 - 14.3.2 within two business days of such notification, Blüm shall acknowledge receipt of the notification and shall determine, in consultation with the Customer, how seriously the Defect affects the Customer's operations;
 - 14.3.3 if a notified Defect halts or substantially impairs the Customer's operations which use the Supported Software, Blüm shall:
 - 14.3.3.1 start work on correcting the Defect within one business day of receipt of such notification;
 - 14.3.3.2 use all reasonable efforts to correct the Defect as soon as possible; and
 - 14.3.3.3 keep the Customer informed of progress towards correction of the Defect.
 - 14.3.4 if a notified Defect, while not halting or substantially impairing the Customer's operations, causes those operations to become significantly slowed or causes substantial inconvenience, Blüm shall commence work on correcting the Defect within 5 business days of receipt of such notification and shall use all reasonable efforts to correct the Defect as soon as possible; and

- 14.3.5 in the case of Defects other than those specified in clause 14.3.3 and clause 14.3.4, Blum shall start work on correcting the Defect within 10 business days as soon as Blum's workload allows, and shall use commercially reasonable efforts to correct the Defect.
- 14.4 Blum shall use reasonable efforts to ensure the accurate migration of any data, but gives no warranties as to the completeness or accuracy of such migration. The Customer shall be responsible for checking the accuracy and completeness of the migrated data and shall promptly give sufficient details to Blum of any inaccuracies or omissions in order to permit Blum to correct them. If such data includes personal data, Blum shall return all copies of such personal data to the Customer on completion of the data migration process.
- 15 OPTIONAL SERVICES – TRAINING HOSTING AND CONSULTANCY SERVICES**
- 15.1 If selected and agreed in the Contract Details, Blum undertakes to provide the Training (as set out in the SOW to the Customer in consideration of the Training charges specified in the SOW.
- 15.2 Any additional training required by the Customer shall be provided by Blum at Blum's standard rates then in force.
- 15.3 Training shall be carried out at such locations as may be agreed by Blum and the Customer. Any special equipment necessary for the Training shall be provided by Blum.
- 15.4 If the Customer has selected the Hosting Services from Blum under the Contract Details then these will be provided in accordance with the terms of the SOW and subject to the fees set out against them in the SOW.
- 15.5 If the Customer has selected the Consultancy Services from Blum under the Contract Details then these will be provided in accordance with the terms of and subject to the fees set out against them in the SOW.
- 16 BLUM PERSONNEL: BLUM SOFTWARE AND SUPPORT SERVICES**
- 16.1 Blum alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of the Support Staff. Blum assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the Customer.
- 16.2 During the term of this agreement and for a period of six months after its termination neither party shall, without the prior written consent of the other, solicit the employment of any person who is employed by the other party in the course of developing, supplying, maintaining or supporting Blum Software or any part of it.
- 17 BLUM SOFTWARE: PROJECT MANAGEMENT**
- 17.1 The Customer shall appoint the Customer Representative, who shall have the authority to contractually bind the Customer on all matters relating to this agreement. The Customer shall use reasonable endeavours to ensure continuity of the Customer Representative, but has the right to replace them from time to time where reasonably necessary in the interests of the Customer's business.
- 17.2 Blum shall appoint the Project Manager, who shall have the authority to contractually bind Blum on all matters relating to this agreement. Blum shall use reasonable endeavours to ensure continuity of the Project Manager, but has the right to replace them from time to time where reasonably necessary in the interests of Blum's business.

17.3 The Customer Representative shall co-operate with the Project Manager and shall attend meetings scheduled by the Project Manager at reasonable intervals not less than once a week to advise and assist Blum on all matters relating to the Work.

17.4 The provision of employees, subcontractors and agents of Blum to carry out the Work shall be at the discretion of Blum.

18 SUPPORT SERVICES: CUSTOMER'S OBLIGATIONS

18.1 During the term in which the Support Services are to be provided under clause 26.2, the Customer shall not, without Blum's prior written approval, allow any person other than a representative of Blum to modify, repair or maintain any part of the Supported Software.

18.2 The Customer shall co-operate with Blum in any manner reasonably required by Blum in order to carry out the Work, including provision of information and data, making available suitably qualified employees and contractors of the Customer and, subject to Blum's compliance with the Customer's normal security requirements as notified to Blum by the Customer:

18.2.1 provide access to the Customer's systems for the purpose of carrying out diagnostics and correction of Defects, provided that system access shall be direct or remote, at the Customer's option, and that, in the latter case, such access will be subject to Blum's compliance with any additional requirements for security and encryption techniques or software which may from time to time be specified by the Customer.

18.2.2 provide such further access for the Support Staff to the Customer's premises as is necessary to carry out Blum's obligations under this agreement. The Customer shall obtain for Blum all permissions necessary to obtain such access.

18.2.3 when the Support Staff are working on the Customer's premises, provide facilities and supplies reasonably required by Blum, such as power and computer consumables.

18.3 The Customer shall, at its own expense, provide the equipment necessary at the Customer's premises to enable the access referred to in clause 18.2.1 in accordance with the specifications set out in the Technical Specification, but all other costs and expenses for such access shall be borne by Blum.

18.4 The Customer may, acting reasonably, restrict access to certain areas of its premises or systems on security grounds.

18.5 The Customer shall, no later than the Support Commencement Date, appoint and maintain for the duration of this agreement an individual to serve as primary contact with Blum for the purpose of the provision of the Services, and a deputy to that individual, and shall notify Blum of the names of those individuals promptly on their appointment.

18.6 The Customer shall comply, as soon as reasonably practicable, with all Blum's reasonable requests for information or assistance.

19 CONFIDENTIALITY AND PUBLICITY

19.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information of the other party, except as permitted by clause 19.2.

19.2 Each party may disclose the other party's Confidential Information:

19.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights

or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 19; and

19.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

19.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

19.4 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 any relevant securities exchange), any court or other authority of competent jurisdiction.

19.5 This clause 19 shall remain in full force and effect, despite any termination of the Licences or this agreement.

20 DATA PROTECTION

20.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 20 is in addition to, and does not relieve, remove, or replace, a party's obligations or rights under the Data Protection Legislation.

20.2 Where and to the extent that Blüm processes personal data on behalf of the Customer under this agreement, the parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and Blüm is the processor. The SOW sets out the scope, nature and purpose of processing by Blüm, the duration of the processing and the types of personal data and categories of data subject.

20.3 Without prejudice to the generality of clause 20.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Blüm for the duration and purposes of this agreement so that Blüm may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.

20.4 Without prejudice to the generality of clause 20.1, Blüm shall, in relation to any personal data processed on behalf of the Customer in connection with the performance by Blüm of its obligations under this agreement:

20.4.1 process that personal data only on the documented written instructions of the Customer unless Blüm is required by applicable law to otherwise process that personal data. Where Blüm is relying on applicable law as the basis for processing personal data, Blüm shall promptly notify the Customer of this before performing the processing required by the relevant law unless the relevant law prohibits Blüm from so notifying the Customer;

20.4.2 ensure that it has in place appropriate technical and organisational measures 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);

20.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

20.4.4 not transfer any personal data outside of the UK unless the following conditions are fulfilled:

20.4.4.1 the Customer or Blum has provided appropriate safeguards in relation to the transfer;

20.4.4.2 the data subject has enforceable rights and effective legal remedies;

20.4.4.3 Blum complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

20.4.4.4 Blum complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

20.4.5 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;

20.4.6 notify the Customer without undue delay on becoming aware of a personal data breach;

20.4.7 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

20.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 20.

20.5 The Customer consents to Blum appointing a third-party processor of personal data under this agreement. Blum confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business and in either case which Blum confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Blum, Blum shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 20.5.

21 WARRANTIES

21.1 Blum warrants and represents that:

21.1.1 the Bespoke Software, Blum Standard Software and Documentation are proprietary to Blum (except where otherwise stated in the SOW) and that, as far as it is aware, it has the right to license all Intellectual Property Rights in and to the Bespoke Software, Blum Standard Software and Documentation to the Customer, and to provide the Support Services to the Customer;

21.1.2 as far as it is aware, none of the New Releases, New Versions and Documentation supplied by Blum under this agreement infringes the Intellectual Property Rights of any third party;

- 21.1.3 the Blum Software at the Acceptance Date, and for six months after that date, will perform in all material respects in accordance with the Technical Specification;
- 21.1.4 it will perform the Support Services quickly and in a reliable and professional manner, in conformity with Good Industry Practice, by a sufficient number of competent personnel with appropriate skills, qualifications and experience and has, and will at all times have, the ability and capacity to meet such requirements;
- 21.1.5 it is in compliance with, and will perform the Support Services in compliance with, all applicable law and regulations (save for Cybersecurity Laws); and
- 21.1.6 the Customer will receive good and valid title to all deliverables in connection with the Support Services, free and clear of all encumbrances and liens of any kind.
- 21.2 The sole remedies for breach of the warranties in clause 21.1.1 and clause 21.1.2 are set out in clause 22.
- 21.3 The sole remedy for breach of the warranty under this clause 21.1.3 shall be correction of Defects by Blum within a reasonable time from notification by the Customer of the Defect that constitutes such breach.
- 21.4 The warranties set out in clause 21.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this agreement. Without limitation, Blum specifically denies any implied or express representation that Blum Software will be fit:
 - 21.4.1 to operate in conjunction with any hardware items or software products other than with those that are identified in the Documentation as being compatible with Blum Software; or
 - 21.4.2 to operate uninterrupted or error-free.
- 21.5 Blum does not warrant or guarantee that it will be able to rectify all Defects, nor that any Defect which does not materially affect the Customer's operations using the Supported Software will be corrected before the issue of the next New Release.
- 21.6 Any unauthorised modifications, use or improper installation of Blum Software by, or on behalf of, the Customer shall render all Blum's warranties and obligations under this agreement null and void.
- 21.7 Blum shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of Blum.
- 21.8 The Customer acknowledges that the only warranties in relation to the Third-Party Software and the Modified Software (Third Party), or the supply thereof, are those contained in the licence from the third-party supplier(s) of the same, and that to the extent that any of such warranties are given to Blum, it will pass on the benefit of such warranties to the Customer.
- 21.9 Any Open-Source Software provided by Blum may be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided "as is" and expressly subject to the disclaimer in clause 21.4.
- 21.10 Save in respect of any specific warranties given elsewhere in this agreement, Blum does not warrant or guarantee that the System, when taken in whole or in part, will:
 - 21.10.1 comply with Cybersecurity Laws, or

21.10.2 contain no Vulnerabilities,

and it shall be the Customer's sole responsibility to ensure that the Technical Specification detail all of the Customer's cybersecurity requirements, including any requirements that might be imposed on the Customer's business, operations or systems under Cybersecurity Laws, in sufficient detail so they can be implemented by Blum as part of the Work.

21.11 The Customer:

21.11.1 warrants to Blum that it will at all times comply with all applicable laws and regulations with respect to its activities under this agreement and in connection with any part of Blum Software;

21.11.2 shall take reasonable steps not to introduce any Virus or Vulnerability to Blum Software or the network and information systems of Blum;

21.11.3 shall indemnify Blum against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Blum arising out of any non-compliance by the Customer with this clause 21.11.

21.12 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this agreement and that those signing this agreement are duly authorised to bind the party for whom they sign.

22 INTELLECTUAL PROPERTY RIGHTS INDEMNITY

22.1 Blum shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Customer's use of Blum Software, any New Release, New Version or Documentation, or the Customer's receipt of the benefit of the Services, in each case in accordance with the agreement, provided that, if any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (**Claim**), the Customer:

22.1.1 as soon as reasonably practicable, gives written notice of the Claim to Blum, specifying the nature of the Claim in reasonable detail;

22.1.2 does not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Blum (such consent not to be unreasonably conditioned, withheld or delayed);

22.1.3 gives Blum and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable Blum and its professional advisers to examine them and to take copies (at Blum's expense) for the purpose of assessing the Claim; and

22.1.4 subject to Blum providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, takes such action as Blum may reasonably request to avoid, dispute, compromise or defend the Claim.

- 22.2 Without prejudice to clause 21.6, Blum shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights:
- 22.2.1 caused or contributed to by the Customer's use of Blum Software or any New Release (as the case may be) in combination with software not supplied or approved in writing by Blum (other than the operating system of any computers used by the Customer, provided that Blum was notified in writing of the identity of this operating system before this agreement was entered into);
 - 22.2.2 based on use of any version of Blum Software other than the latest version supplied by Blum, if such claim could have been avoided by the use of such supplied version; or
 - 22.2.3 where the claim for infringement arises in respect of a feature of Blum Software which was specified by the Customer's instructions.
- 22.3 If use of Blum Software or receipt of the benefit of the Support Services becomes, or in the opinion of qualified legal counsel is likely to become, the subject of any such claim, Blum may:
- 22.3.1 replace all or part of Blum Software, the New Releases or New Versions (as the case may be) with functionally equivalent software or documentation without any charge to the Customer;
 - 22.3.2 modify Blum Software;
 - 22.3.3 procure for the Customer a licence from the relevant claimant to continue using Blum Software or the New Releases (as the case may be).
- 22.4 If:
- 22.4.1 use of Blum Software or any New Release (as the case may be) is determined in a court of law to be infringing;
 - 22.4.2 Blum is advised by a barrister of at least ten years' call that use or possession by the Customer of the Licensed Software and/or the Documentation in accordance with this agreement is likely to constitute infringement of a third party's rights; or
 - 22.4.3 if an injunction or similar order is granted in connection with a claim of the types referred to in clause 22.1 which prevents or restricts the use or possession by the Customer of the Licensed Software and/or the Documentation in accordance with this agreement;
- and Blum is unable, after best efforts, to procure for the Customer the right to continue using Blum Software, the New Releases or New Versions (as the case may be) or to provide the Customer with functionally equivalent non-infringing software, this agreement and the Licences will be terminated.
- 22.5 Notwithstanding any other provision in this agreement, clause 22.1 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Open-Source Software or through the breach of any Third-Party Licence relating to any Open-Source Software by the Customer.
- 22.6 If a payment due from Blum under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Customer shall be entitled to receive from Blum such amounts as shall ensure that the net receipt, after tax, to the Customer in respect of the payment is the same as it would have been were the payment not subject to tax.

22.7 Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

23 LIMITATION OF LIABILITY

23.1 Except as expressly provided in this agreement and to the fullest extent permitted by applicable law:

23.1.1 the Customer shall be solely responsible, as against Blum, for any opinions, recommendations, forecasts or other conclusions made or actions taken by the Customer, any client of the Customer or any other third party based (wholly or in part) on the results obtained from the use of the Software or the Services by the Customer;

23.1.2 Blum shall have no liability for any damage caused by errors or omissions in any information or instructions provided to Blum by the Customer in connection with the Services; and

23.1.3 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are excluded from this agreement.

23.2 Neither party excludes or limits liability to the other party for:

23.2.1 fraud or fraudulent misrepresentation;

23.2.2 death or personal injury caused by negligence;

23.2.3 a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

23.2.4 any matter for which it would be unlawful for the parties to exclude liability.

23.3 Subject to clause 23.2, Blum shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

23.3.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;

23.3.2 any loss or corruption (whether direct or indirect) of data or information;

23.3.3 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or

23.3.4 any loss or liability (whether direct or indirect) under or in relation to any other contract.

23.4 Clause 23.3 shall not prevent claims, which fall within the scope of clause **Error! Reference source not found.**, for:

23.4.1 direct financial loss that are not excluded under any of the categories set out in clause 23.3.1 to clause 23.3.4; or

23.4.2 tangible property or physical damage.

23.5 Subject to clause 23.2, Blum's total aggregate liability in contract (including in respect of the indemnity at clause 22.1), tort (including negligence and breach of statutory duty howsoever

arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract shall be limited to the price paid for the Services during the 12 months preceding the date on which the claim arose or, if the claim arose during any period before 12 months had elapsed from the Commencement Date, during that shorter period.

- 23.6 The parties acknowledge and agree that any dates quoted for delivery of the Work or the Support Services are approximate only, and that the time of delivery is not of the essence. Blum shall not be liable for any delay in delivery of the Work or the Support Services that is caused by an event, circumstance or cause within the scope of clause 35 or the Customer's failure to provide Blum with adequate delivery instructions.

24 ASSIGNMENT AND SUBCONTRACTING

- 24.1 Subject to clause 24.4, the Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of Blum (such consent not to be unreasonably withheld or delayed).
- 24.2 Blum may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement, provided that it gives prompt written notice of such dealing to the Customer.
- 24.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 24.4 Either party may assign or subcontract any or all of its rights and obligations under this agreement to an Affiliate of that party for so long as that company remains an Affiliate of that party. The assignor shall procure that such company assigns any rights assigned to it in accordance with this clause 24.4 back to the assignor or another Affiliate of that party immediately before it ceases to be an Affiliate of that party.
- 24.5 Notwithstanding clause 19, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 24.5 shall be made until notice of the identity of the proposed assignee has been given to the other party.

25 DURATION

- 25.1 This agreement shall, subject to clause 25.2, commence on the Commencement Date and shall continue for the Term, unless terminated earlier in accordance with clause 26, when it shall automatically expire.
- 25.2 The Support Services shall commence on the Support Commencement Date and shall continue until the Support Services are terminated in accordance with clause 26.4, unless terminated earlier in accordance with any of the other provisions of clause 26 or such other period as may be set out in the Term.
- 25.3 The customer can request to pause the project with no less than one month notice, at which point Blum will confirm whether a pause is possible and any costs associated with such pause. Once a pause has been executed, the customer agrees to pay 50% of the expected fees owed to Blüm during the paused phase as a Retained Service.

26 TERMINATION

- 26.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement and/or the Support Services with immediate effect by giving written notice to the other party if:
- 26.1.1 the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - 26.1.2 the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 26.1.3 the other party 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;
 - 26.1.4 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 26.1.5 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
 - 26.1.6 any warranty given in clause 21 is found to be untrue or misleading.
- 26.2 The parties acknowledge and agree that any breach of clauses 19 or 20 shall constitute a material breach of a term for the purposes of this clause.
- 26.3 Either party may terminate this agreement in accordance with clause 35.
- 26.4 The Customer may terminate the Support Services at or after the expiry of three years from the Support Commencement Date by giving at least 90 days' prior written notice.
- 26.5 On termination of the Licences, the Customer shall either return to Blüm or, at Blüm's option, destroy all material copies of the Licensed Software and Documentation, and shall ensure that any copies of the Licensed Software on hard discs or other storage means associated with any computer equipment owned or controlled by the Customer are permanently deleted.
- 26.6 The Licences shall automatically terminate on the expiry or any termination of this agreement (however caused).
- 26.7 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 26.8 Termination of this agreement shall not affect 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.

- 26.9 Notwithstanding its obligations in this clause 26, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 26.10 On termination of this agreement for any reason, each party shall as soon as reasonably practicable:
- 26.10.1 return, destroy or permanently delete (as directed in writing by the other party and, where relevant, any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party. If required by the other party, it shall provide written evidence no later than 30 days after termination of this agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 19), provided that the Customer may retain copies of any Blum Confidential Information incorporated into Blum Software or to the extent necessary to allow it to make full use of the Services and any Blum Software to the extent still be permitted by the agreement of the parties;
 - 26.10.2 permanently delete any proprietary software belonging to the other party and not the subject of a current licence granted by the other party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party. Each party shall provide written confirmation no later than 30 days after termination of this agreement that this software has been deleted;
 - 26.10.3 subject to clause 26.10.2, return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them, provided, regarding the Customer's rights under this clause 26.10.3, that the Customer has (if appropriate) paid Blum in full for such equipment and materials. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping,
- and any electronic data shall be considered deleted, for the purposes of this clause 26.10, where it has been put beyond use by the deleting party.
- 26.11 On termination of this agreement (other than for a breach by the Customer), Blum shall refund such portion of the Fees as was paid in advance as relates to the period after expiry or termination on a pro rata basis.
- 26.12 On termination of this agreement for any reason, all outstanding invoices shall become due and the Customer shall immediately pay any outstanding unpaid invoices (and any interest due) to Blum. Blum shall be entitled to submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

27 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.

28 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.

29 ENTIRE AGREEMENT

29.1 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.

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

30 VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

31 SEVERANCE

31.1 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.

31.2 If any provision or part-provision of this agreement is deemed deleted under clause 31.1 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.

32 COUNTERPARTS

32.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

32.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this agreement.

32.3 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

33 THIRD-PARTY RIGHTS

33.1 Except as expressly provided, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

33.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement is not subject to the consent of any person that is not a party to this agreement.

34 NO PARTNERSHIP OR AGENCY

34.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

34.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

35 FORCE MAJEURE

35.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 60 days, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

36 NOTICES

36.1 Any notice required to be given under this agreement, shall be in writing and sent to the party at the address or email address given in this agreement or as otherwise notified in writing to the other party..

36.2 Any notice shall be deemed to have been duly received:

36.2.1 if delivered by hand, at the time when the notice is left at the address;

36.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting; or

36.2.3 if sent by email, at the time of transmission.

36.3 If deemed receipt under clause 37.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 37.3, business hours mean 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

36.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

37 DISPUTE RESOLUTION

37.1 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:

37.1.1 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 Project Manager and Customer Representative shall attempt in good faith to resolve the Dispute;

37.1.2 if the Project Manager and Customer Representative are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Chief Product Officer of Blum and equivalent officer of the Customer who shall attempt in good faith to resolve it; and

37.1.3 if the Chief Product Officer of Blum and the equivalent office of the Customer are for any reason unable to resolve the Dispute within 30 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 60 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve 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. Unless otherwise

agreed between the parties, the mediation will start not later than 30 days after the date of the ADR notice.

37.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 39 (Jurisdiction), which clause shall apply at all times.

37.3 If the Dispute is not resolved within 60 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 60 day period, or the mediation terminates before the expiry of that 60 day period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 39 (Jurisdiction) in this agreement.

38 **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.

39 **JURISDICTION**

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