



## **TERMS & CONDITIONS**

### **Agreed terms**

1. **Interpretation**
- 1.1 **Definitions:**
  - 1 **Booking Form:** the 'booking form' attached above to these Conditions.
  - 2 **Business Day:** we are open in line with Warwickshire County Council term dates, we do not deliver sessions on bank holidays or inset days, however session charges still apply.
  - 3 **Charges:** the charges payable by the Customer for the supply of the Services by the Provider, as set out in out in below. **Child/Children: the child or children for whom the Services are being provided under these Conditions.**
  - 4 **Conditions:** these terms and conditions set out in 1 (Interpretation) to clause 13 (General) (inclusive), together with the Schedules below.
  - 5 **Contract:** the contract between the Customer and the Provider for the supply of the Services in accordance with these Conditions.
  - 6 **control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.
  - 7 **Customer:** the person or entity that is named and has signed the Booking Form.
  - 8 **Intellectual Property Rights:** patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, 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.
  - 9 **Provider:** **Flourish At The Farm Limited** incorporated and registered in England and Wales with company number **11990878** and whose registered office is at 32 The Green, Snitterfield, Stratford-Upon-Avon, United Kingdom, CV37 0JG.
  - 10 **Provider Materials:** all materials, equipment, books, stationery, educational items, drawings, specifications and data supplied by the Provider to the Customer and/or Children.
  - 11 **Services** the services to be provided by the Provider pursuant to these Conditions, as described in
  - 12 **Services Start Date:** the day on which the Provider is to commence the provision of the Services, as set out in the Booking Form.
  - 13 **Session:** the relevant session(s) at which the Services are to be provided by the Provider for the Children under the Contract.
- 1.2 **Interpretation:**
  - (a) Unless expressly provided otherwise in these Conditions, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
  - (b) 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.
  - (c) A reference to **writing** or **written** includes email.
2. **Commencement and term**
  - 2.1 The Contract shall commence on the date when it has been signed by both parties and shall continue, unless terminated earlier in accordance with its terms, until the end of the Commitment Duration (as defined in the Booking Form).
  - 2.2 The Customer may not cancel the Contract except as permitted by these Conditions. The Customer agrees to indemnify, and keep indemnified, the Provider against all costs, expenses and losses incurred by the Provider and arising as a result of any unlawful cancellation or purported cancellation of the Contract by the Customer.
3. **Supply of services**
  - 3.1 The Provider shall supply the Services to the Customer from the Services Start Date in accordance with the Contract.
  - 3.2 In performing the Services, the Provider shall meet any performance dates set out in Schedule 1.
  - 3.3 In supplying the Services, the Provider shall:
    - (a) perform the Services with reasonable skill, care and diligence, and in accordance with best practice in the Provider's industry;
    - (b) co-operate with the Customer in all matters relating to the Services;
    - (c) appoint a manager who shall have authority to bind the Provider on matters relating to the performance of the Services;
    - (d) use personnel who are reasonably skilled and experienced to perform the tasks assigned to them;
    - (e) ensure that it obtains, and maintains all necessary consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to perform the Services;
    - (f) provide relevant equipment, materials and other items required to provide the Services;
    - (g) comply with all applicable laws, statutes, regulations, health and safety standards, safe-guarding provisions relevant to the Children, and otherwise, from time to time in force, that are relevant to and/or in connection with the provision of the Services;
    - (h) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises from time to time;
    - (i) make reasonable efforts to accommodate a change in the Customer/Children's requirement for their Sessions. Such requests are always subject to the Provider's availability of free Sessions to provide the Services;
    - (j) become responsible for the care and welfare of the Children, from the point that the relevant Child is handed over by its authorised parent/guardian to a staff member of the Provider at the start of a Session until the end of that Session, at which point a staff member of the Provider will return the Child, and responsibility for the care and welfare of the Child, to the authorised parent/guardian or to a registered and authorised taxi firm transfer, as pre-approved by the Customer; and
    - (k) notify the Customer in writing immediately upon the occurrence of a change of control of the Provider.
  - 3.4 The Provider shall have the right to make any changes to the Services, which are required to comply with any applicable law, safety requirements or otherwise, or alternatively, which do not materially affect the nature or quality of the Services.
  - 3.5 If Covid-19 or any other reason causes the Provider to close its facilities, the Provider shall use its reasonable efforts to provide on-line Sessions until the re-opening of the Provider's on-site facilities. If a Child is required to go into self-isolation because of Covid-19 or some other similar ailment, the Provider shall (in its sole discretion) provide on-line Sessions to the Child concerned during the Child's self-isolation period. Alternatively, in the Provider's sole discretion, the Customer may fill the Session with a different Child. The Provider will require 48 (forty-eight) hours' written notice from the Customer to implement these changes.
4. **Customer's obligations**
  - 4.1 The Customer shall, and will procure that the Children and their authorised guardians/parents shall:



- (a) ensure that the Children act reasonably, sensibly and well-mannered, throughout, whilst they are in the care of the Provider. This is an important obligation that the Customer must discharge because the Provider owes separate duties and safe-guarding obligations to other children under its care. The Provider cannot tolerate unreasonable behaviour by the Children if, without limitation, this has an impact on the welfare and wellbeing of other children under the Provider's care. For the avoidance of doubt, and without prejudice to any other rights available to it under the Contract and/or law, the Provider reserves its right to refuse the attendance of and/or exclude any Children who become abusive, aggressive, act unreasonably or in an ill-mannered way, whether to the detriment of themselves, other children, visitors and/or members of the Provider's staff. The Customer will be informed immediately should such circumstances arise;
  - (b) provide such access to the Customer's information, data and otherwise, as required by the Provider, so that that the Provider may provide the Services;
  - (a) hold all Provider Materials in safe custody at the Customer's own risk, maintain the Provider Materials in good condition until returned to the Provider, and not dispose of or use the Provider Materials other than in accordance with the Provider's written instructions or authorisation;
  - (c) not do or omit to do anything, which may cause the Provider to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business and/or providing the Services;
  - (d) strictly comply with the Provider's practices, procedures and guidelines concerning Covid-19 and otherwise; and
  - (e) provide such necessary information and assistance for the provision of the Services, as the Provider may reasonably request.
- 4.2 A material breach by the Customer to comply with the terms of the Contract will immediately relieve the Provider from complying with its obligations under the Contract with effect from the date on which the Provider notifies the Customer, in writing, of the Customer's failure(s) and its effect or anticipated effect on the Services.
- 5. Provider Materials**
- 5.1 All Provider Materials shall at all times remain the exclusive property of the Provider.
- 6. Data protection**
- 6.1 The parties shall comply with their data protection obligations as set out in the Data Protection Act 2018 and other relevant data protection legislation. In particular, the parties shall comply fully with their respective duties with regard to personal data of the Children, the Customer and other children in the Provider's care ("**Client Data**").
- 6.2 The Customer hereby consents to the Provider sharing, processing and utilising all and any Client Data, so that the Provider may perform its duties under the Contract and for the advancement and benefit of the Provider's business generally.
- 7. Intellectual property**
- 7.1 The Provider shall at all times retain exclusive ownership of all and any Intellectual Property Rights in the Provider Materials and otherwise associated with the Provider's business and the Services (the "**Provider's Intellectual Property Rights**"). Nothing in the Contract or otherwise, shall be taken as a grant of a licence or otherwise by the Provider to the Customer or Children, to use the Provider's Intellectual Property Rights without the Provider's prior written consent.
- 7.2 The Customer shall ensure that, without the Provider's prior written consent: (a) any confidential information of the Provider (including, without limitation, that which relates to the provision of the Services) of which it becomes aware (which information shall at all times remain the property of the Provider) shall not be copied, used, or disclosed and that all materials containing such information shall be returned to the Provider at the end of the Contract; and (b) any tradenames or marks that the Provider uses on or in connection with the Services, are not supplemented by any mark of the Customer, interfered with, used, obscured or otherwise.
- 7.3 The Customer shall not copy the designs, documents and patterns of the Provider without the prior written permission of the Provider. Copying or reproducing any Services from the Provider is unlawful.
- 8. Charges**
- 8.1 In consideration of the provision of the Services, the Customer shall pay the Provider the Charges in accordance with Schedule 2.
- 8.2 The Provider may at any time, without notice to the Customer, set off any liability of the Customer to the Provider against any and all liability of the Provider to the Customer, whether any such liability is past, present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Provider of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 9. Limitation of liability**
- 9.1 References to liability in this 9 include every kind of liability arising under or in connection with the Contract including, but not limited to, liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2 Nothing in the Contract limits any liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.3 Subject to , and in any event, the Provider's total liability to the Customer shall:
- (a) Not exceed the Charges it has actually received from the Customer;
  - (b) Exclude all and any:
    - (i) Loss of profits;
    - (ii) Loss of sales or business;
    - (iii) Loss of agreements or contracts;
    - (iv) Loss of anticipated savings;
    - (v) Loss of use or corruption of software, data or information;
    - (vi) Loss of opportunity;
    - (vii) Loss of or damage to goodwill;
    - (viii) Indirect or consequential loss;
    - (ix) Loss or damage caused by Children to: (a) any property belonging to the farm (that neighbours the premises from which the Services are performed) or to the general public; and (b) to third parties including, without limitation, other children, parents/guardians, the Provider's members of staff, visitors etc; and
    - (x) Loss relating to, in any way, the Children and/or the parents/guardians of the Children, including, without limitation, for all and any claims that the Children and/or the parents/guardians of the Children bring or seek to bring against the Provider and/or Customer arising out of and/or in connection with the Contract and/or the subject matter of the Contract ("**Claim**"). The Customer undertakes that it shall be solely liable for all and any Claims. (For the avoidance of doubt, there shall be no contractual relationship between the Children and/or the parents/guardians of the Children and the Provider.)
- 9.4 The Customer accepts and agrees that the above limitations are reasonable in light of its relationship with the Provider, and the availability of insurance against such risks.



## 10. Insurance and Indemnity

- 10.1 During the term of the Contract, and for a period of 12 (twelve) months thereafter, the Customer shall obtain and maintain in force, with a reputable UK insurance company, professional indemnity insurance, public liability insurance and any other relevant insurance, to cover all and any liabilities that may arise under or in connection with the Contract, the Services, the Claims and the subject matter thereof (the "Policies"), and shall produce to the Provider on request, both the Policy certificate giving details of cover and the receipt for the current year's premium in respect of each and every Policy.
- 10.2 The Customer shall notify all and any such insurers, of the Provider's interest under the Policies.
- 10.3 The Customer shall not do or omit to do anything that may invalidate any of the Policies.
- 10.4 In the event of any payment made by the insurers to the Customer under the Policies for any matter referred to in clause 10.1 above, the Customer shall direct such insurers to make that payment directly to the Provider.
- 10.5 Notwithstanding the foregoing and anything else in the Contract or otherwise, the Customer shall indemnify the Provider against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Provider arising out of or in connection with any and all Children Claims and/or breach by the Customer of its obligations under the Contract.

## 11. Termination

- 11.1 Without affecting any other right or remedy available to it, the Provider may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) there is a change of control of the Customer;
  - (b) the Customer has failed to pay any amount due under the Contract by the relevant due date and such amount remains unpaid for 20 Business Days after the Provider has given notification that the relevant payment is overdue; or
  - (c) the Customer's financial position deteriorates to such an extent that in the Provider's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been significantly prejudiced.
- 11.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a breach of any condition of the Contract, which breach is irremediable or, if such breach is remediable, fails to remedy that breach within a period of 10 (ten) Business Days after being notified in writing to do so;
  - (b) 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
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 11.3 In the event of a termination under condition 11.1 or 11.2 above by the Provider, and without prejudice to any other right or remedy available to the Provider, the Provider may (at its sole discretion) immediately cancel or suspend all and any of its further performance under the Contract or under any other contract between the Customer and the Provider without incurring any liability to the Customer, and all outstanding Charges in respect of Services already delivered to the Customer shall become immediately due and payable by the Customer to the Provider.
- 11.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract, shall remain in full force and effect including, without limitation, clauses: 1; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; and Schedule 2.
- 11.5 Termination of the Contract shall not affect any of the 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 Contract which existed at or before the date of termination.

## 12. Exit arrangements

- 12.1 On termination of the Contract for whatever reason, the Customer shall immediately:
- (a) return all Provider Materials to the Provider. If the Customer fails to do so, then the Provider may enter the Customer's premises and take possession of them. Until they have been delivered or returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose; and
  - (b) if so requested by the Provider, provide all assistance required by the Provider to facilitate the smooth transition of the Services from the Customer to any replacement customer.

## 13. General

- 13.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control and/or an act of God.
- 13.2 **Subcontracting.** The Provider may, in its sole discretion, subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Customer.
- 13.3 **Confidentiality.**
- (a) Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or providers of the other party including, but not limited to, the Charges, except as permitted by clause 13.3(b) below.
  - (b) Each party may disclose the other party's confidential information as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
  - (c) Neither party shall use the other party's confidential information, whether directly or indirectly, for any purpose other than to perform its obligations under the Contract.
- 13.4 **Entire agreement.** The Contract 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. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Provider, which is not expressly set out in the Contract.

The Contract shall apply to parties' relationship, to the exclusion of all and any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice, course of dealing or otherwise. For the avoidance of doubt, no terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, email, specification or other document, shall form part of the Contract except to the extent that the Provider otherwise explicitly agrees in writing.

- 13.5 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 13.6 Waiver.

- (a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or



partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 13.7 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 13.7 shall not affect the validity and enforceability of the rest of the Contract.
- 13.8 No Assignment.** The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Provider.
- 13.9 Notices.**
- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
    - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
    - (ii) sent by email to the address specified in the Booking Form.
  - (b) Any notice shall be deemed to have been received:
    - (i) if delivered by hand, at the time the notice is left at the proper address;
    - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
    - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 13.9(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
  - (c) This 13.9 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 13.10 Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 13.11 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, the law of England and Wales.
- 13.12 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

#### SCHEDULE 1 – SERVICES

1. We will provide at Flourish at The Farm a Learning Mentor, prepared activities, Flourish at The Farm resources and a Flourish at The Farm student report.

#### SCHEDULE 2 – CHARGES

1. The Customer shall pay the Provider:
  - 1.1 The customer will pay the full invoiced amount.  
(collectively, the “Charges.”)
  2. The Provider shall submit invoices for the Charges plus VAT (if applicable) to the Customer, once the placement has been agreed verbally or by signing the contract/booking form.
  3. The Customer shall pay each invoice within 15 (fifteen) Business Days, to the following bank account:  
Lloyds Bank, account name Flourish at The Farm Ltd Account No: 69912268 Sort code:30-94-93
  4. Except where the Provider has agreed in advance and in writing, to extend credit to the Customer, the Charges shall be payable in full, without any deduction or set off, and in cleared funds on the relevant due date. Time for payment by the Customer is of the essence.
  5. In the event that the Customer fails to make any payment due to the Provider under the Contract by the relevant due date, the Provider shall be entitled to immediately claim compensation on the overdue amount at the rate of 10% (ten per cent). Such compensation is without prejudice to all and any other interest or compensation that the Provider may be entitled to under law or otherwise, until the date of full payment of the overdue amount, whether before or after judgement.
  6. For the avoidance of doubt, no refunds will be provided by the Provider if Children fail to attend any Session(s). The Provider shall inform the Customer of any such absence and also if attendance by any Children becomes irregular.
  7. Session Charges will apply during normal term times, including bank holidays and inset or training days.

If you have any queries, please contact [admin@flourishatthefarm.co.uk](mailto:admin@flourishatthefarm.co.uk)