

## TERMS & CONDITIONS

This Agreement sets out the Terms & Conditions governing the use of the 'BlindCell' software tool (version number V.1.1) (hereinafter referred to as the "**Software**") and the Documentation. By downloading and installing the Software from [blind-cell.com](http://blind-cell.com) (the "**Website**"), the Customer agrees to the Terms & Conditions of this Agreement, which will bind the Customer. The Terms & Conditions of this Agreement include, in particular, limitations on liability in clause 5. If the Customer does not agree to the Terms & Conditions of this Agreement, the Supplier shall not license the Software and Documentation to the Customer and the Customer must discontinue the downloading process. In this case, the Customer may not download or order any Software or Documentation from the Website. The Customer should print a copy of this Agreement for future reference.

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## 1. Definitions

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The following definitions are applied to this Agreement:

- **Affiliates:** means entities controlling, controlled by or under common control with Supplier.
- **Agreement:** means the Terms & Conditions set out in this document (“**Terms & Conditions**”); and the AOD (together with any renewal thereof).
- **AOD:** means the applicable order document available on the Website.
- **Customer:** means the individual or entity specified as the customer on the AOD.
- **Documentation:** means the user guide(s) published from time to time for the relevant Software on the Website (including, but not limited to, the Installation Manual referred to in clause 10.1).
- **Initial Subscription Period:** means the period specified in the AOD, as may be extended in accordance with clause 7.1B.
- **New Version:** means a new release of the Software that includes a major revision, alteration, improvement, modification, or the like, to the current Software release.
- **Renewal Period:** means each successive period following the expiry of the Initial Subscription Period, as may be extended in accordance with clause 7.1B.
- **Start Date:** means the date notified by the Supplier to the Customer by e-mail and being, in respect of each Software licensed, the later of: (a) the date specified as the date on which access to the Software is intended to start; and (b) the actual date on which access to that Software is given.
- **Subscription Fees:** mean the fees payable by Customer for the licensing of the Software and the Documentation as specified in the AOD in respect of the Initial Subscription Period and any Renewal Period.
- **Supplier:** means Experts for Integrated Solutions Limited, incorporated and registered in England and Wales with company number 11626422 whose registered office is at Park House, 1-4 Park Terrance, Worcester Park, Surrey KT4 7JZ, UK.
- **Term:** means the Initial Subscription Period and any subsequent Renewal Periods.
- **Trial:** means use of the Software for evaluation purposes only during the applicable Trial Period.
- **Trial Period:** means a period during which Customer may Trial the Software without charge (unless otherwise agreed), the length of which will be notified to Customer via the AOD or otherwise.
- **Updates:** means any periodic Software releases, if any, for purposes of: (a) providing minor enhancements and / or improvements, patches, fixes, or the like to the Software; or (b) resolving technological issues or correcting errors.

## 2. Software Licence

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### 2.1 Grant

- A. Subject to and in consideration of payment by the Customer of the Subscription Fees, and subject to clause 7.2, Supplier, on the Start Date or upon expiry of the Trial Period (as applicable), hereby grants to the Customer for the Term a non-exclusive, non-transferable, limited licence to use the Software (including any applicable Updates and / or New Versions) and the Documentation, in accordance with this Agreement.
- B. The Customer may:
  - a. download, install and use the Software for its personal purposes (if it is a consumer) or its internal business purposes (if it is a business user) only on one central processing unit (CPU); and
  - b. use any Documentation in support of the use permitted under this clause 2.1 and make such copies of the Documentation as reasonably necessary for its lawful use.

### 2.2 Restrictions

Except as expressly set out in this Agreement or as permitted by any local law, the Customer undertakes:

- A. not to reverse-engineer, decompile, disassemble or create derivative works based on the whole or any part of the Software nor attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by the Customer during such activities:
  - a. is used only for the purpose of achieving inter-operability of the Software with another software program; and
  - b. is not unnecessarily disclosed or communicated without the Supplier's prior written consent to any third party; and
  - c. is not used to create any software which is substantially similar to the Software;
- B. to supervise and control use of the Software, and to notify its employees and agents who may have access to the Software of the restrictions contained herein and to ensure their compliance with these restrictions;
- C. to comply with all applicable technology control or export laws and regulations.

### 2.3 Other Licences

All access and use of other suppliers' products and services by means of the Software, including any charges for such access and use, will be governed by the terms & conditions applicable to the relevant supplier. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party product or service, or any transactions completed, and any contract entered into by the Customer, with any such third party. The Supplier does not endorse or approve any such third-party product or service.

## 2.4 Title

- A. Customer hereby acknowledges and agrees that all intellectual property rights in and to the Software, the Documentation and any other related materials are, and shall remain, vested solely in Supplier and its Affiliates and other software owners, if any, and Customer shall have no rights in, or to, the Software or the Documentation or any related materials other than the right to use them in accordance with this Agreement.
- B. The Customer hereby acknowledges that it has not right to have access to the Software in source code form.

## 3. Confidentiality and Publicity

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- A. Each party shall, during the Term and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this Agreement) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or (in the case of the Supplier) any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- B. No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- C. Without prejudice to the generality of clause 3.1A, the Customer shall keep confidential any and all passwords provided to it by the Supplier in connection with the use of the Software.

## 4. Subscription Fees

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- A. The Subscription Fees payable by Customer for use of the Software will be as specified in the AOD and will cover the Software licence, maintenance, and support services as provided in clauses 2, 9 and 10 of this Agreement. Customer shall pay the Subscription Fees in advance for the Initial Subscription Period and any Renewal Periods.
- B. The Supplier may increase the Subscription Fees on an annual basis with effect from each anniversary of the Start Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Start Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

## 5. Warranties and Limitation of Liability

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### 5.1 Limited Warranty

- A. The Supplier hereby warrants that:
- a. the Software will, when properly used and on an operating system for which it was designed, perform substantially in accordance with the functions described in the Documentation; and
  - b. the Documentation correctly describe the operation of the Software in all material respects,
- for a period of seven days from the date of installation of the Software ("**Warranty Period**").
- B. If, within the Warranty Period, the Customer notifies the Supplier in writing of nay defect or fault in the Software as a result of which it fails to perform substantially in accordance with the Documentation, the Supplier will, at its sole option, either repair or replace the Software, provided that the Customer makes available all the information that may be necessary to help the Supplier to remedy the defect or fault, including sufficient information to enable us to recreate the defect or fault.
- C. If the Customer is a consumer, this warranty is in addition to its legal rights in relation to Software that is fault or not as described. The Customer may obtain advice regarding its legal rights from its local Citizens' Advice Bureau or Trading Standards office.

### 5.2 Failures Not Caused by Supplier

The warranty in clause 5.1A shall not apply if the defect or fault in the Software results from:

- A. the Customer's use of the Software in combination with any other software not provided by the Supplier;
- B. the malfunction of hardware;
- C. the Customer having altered or modified the Software;
- D. the Customer using the Software in breach of the Terms & Conditions of this Agreement and / or the Documentation; or
- E. the Customer's failure to implement and maintain a proper and adequate backup and recovery system for the Software and associated files,

and if Supplier discovers that a failure is caused by one of the above, Supplier reserves the right to charge Customer for its work in investigating such failure. At Customer's request and at a fee to be agreed upon between the parties, Supplier will thereafter assist Customer in resolving such failure.

### 5.3 Operating Systems

The Customer hereby acknowledges and agrees that some systems and / or software may not be capable of supporting the Software and that performance of the Software may vary with equipment and telecommunications links with which it is used. The Customer hereby confirms that it has made appropriate investigations into the necessary systems and / or software required to support Customer's use of the relevant Software.

### 5.4 Limitation of Liability if the Customer is a Business User

- A. The Customer acknowledges that the Software has not been developed to meet its individual requirements, and that it is therefore its responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet its requirements.
- B. If the Customer is a business user, the Supplier only supplies the Software and Documentation for the Customer's internal business use, and the Customer agrees not to use the Software or Documents for any re-sale purposes.
- C. The Supplier shall not in any circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
  - a. loss of profits, sales, business, or revenue;
  - b. business interruption;
  - c. loss of anticipated savings;
  - d. loss or corruption of data or information;
  - e. loss of business opportunity, goodwill or reputation; or
  - f. any indirect or consequential loss or damage.
- D. Other than the losses set out in clause 5.3C (for which the Supplier is not liable), the Supplier's maximum aggregate liability under or in connection with this Agreement whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to 100% of the Subscription Fee in the Initial Subscription Period or Renewal Period (as applicable) in respect of which the claim arises. This maximum cap does not apply to clause 5.3E.
- E. Nothing in this Agreement shall limit or exclude the Supplier's liability for:
  - a. death or personal injury resulting from its negligence;
  - b. fraud or fraudulent misrepresentation;
  - c. any other liability that cannot be excluded or limited by English law.
- F. This Agreement sets out the full extent of the Supplier's obligations and liabilities in respect of the supply of the Software and Documentation. Except as expressly stated in this Agreement, there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Supplier. Any condition, warranty, representation or other term concerning the supply of the Software and Documentation which might otherwise be implied into, or incorporated in, this Agreement whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

## 5.5 Limitation of liability if the Customer is a Consumer User

- A. The Customer acknowledges that the Software has not been developed to meet its individual requirements, and that it is therefore its responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet its requirements.
- B. If the Customer is a consumer, the Supplier only supplies the Software and Documentation for domestic and private use. The Customer agrees not to use the Software and Documentation for any commercial, business or re-sale purposes, and the Supplier has no liability to the Customer for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- C. The Supplier is only responsible for loss or damage the Customer suffers that is a foreseeable result of the Supplier's breach of this Agreement or its negligence up to the amount specified in clause 5.4D, but the Supplier is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of the Supplier's breach or if they were contemplated by the Customer and the Supplier at the time the Supplier granted the licence under clause 2.1.
- D. The Supplier's maximum aggregate liability under or in connection with this Agreement whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to 100% of the Subscription Fee in the Initial Subscription Period or Renewal Period (as applicable) in respect of which the claim arises. This does not apply to the types of loss set out in condition 5.4E.
- E. Nothing in this Licence shall limit or exclude the Supplier's liability for:
  - a. death or personal injury resulting from its negligence;
  - b. fraud or fraudulent misrepresentation; or
  - c. any other liability that cannot be excluded or limited by English law.

## 6. Infringement Claims

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- A. Customer shall promptly inform Supplier if Customer becomes aware of:
  - a. any unauthorised use of the Software;
  - b. any actual, threatened, or suspected infringement of any intellectual property of Supplier, its Affiliates and / or licensors of the foregoing in the Software which comes to Customer's notice; and
  - c. any claim by any third party coming to its notice that the Software infringes the intellectual property or other rights of any other person.
- B. Customer shall at the request of Supplier promptly do all such things as may be reasonably required to assist Supplier in taking or resisting proceedings in relation to any infringement or claim referred to in this clause and in maintaining the validity and enforceability of the intellectual property of Supplier, its Affiliates and / or licensors of the foregoing in the Software.



- C. In the event a claim of infringement is made against Supplier or Customer with respect to the Software, Supplier, for the purpose of settling such claim, may, at its option, in respect of such allegedly infringing Software:
- a. substitute fully equivalent non-infringing software; or
  - b. modify the Software so that it no longer infringes but remains functionally equivalent.
- If, as a result of such claim, Customer or Supplier is permanently enjoined from using the Software by a final, non-appealable decree from a court of competent jurisdiction, Supplier will take one or both of the actions set forth in (a) and (b) above or will obtain for Customer at Supplier's expense the right to continue to use the Software.
- D. Supplier's obligations to Customer pursuant to this clause 6 are contingent upon Supplier being given prompt notice and control of, and detailed information with regard to, any such claim, suit or proceeding. Customer shall have the right to participate at its own cost in the defence of any such claim or action through legal counsel of its choosing. Customer shall not settle any such claim or action without Supplier's prior written consent.
- E. This clause 6 contains Supplier's entire obligation and the exclusive remedies of Customer with regard to any claimed infringement arising out of or based upon the Software used by Customer.

## 7. Term and Termination

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### 7.1 Validity Period

- A. This Agreement will, once approved by Supplier, commence on the Start Date and shall, unless terminated earlier in accordance with clause 7.3, continue until expiry of the Initial Subscription Period, when it shall terminate automatically without notice unless before the end of the Initial Subscription Period (or any Renewal Period agreed under this clause), the Customer notifies the Supplier via the AOD that the term of this Agreement shall be extended for a Renewal Period. Unless it is further extended under this clause or terminated earlier in accordance with clause 7.3, the Agreement shall terminate automatically without notice at the end of a Renewal Period.
- B. If the Customer so requests from time to time via the AOD, the parties may agree an extension to the Initial Subscription Period or any Renewal Period, and the Supplier may adjust the Subscription Fees and its invoicing procedure as necessary to take account of such extension.

### 7.2 Trial Period

- A. Where the Customer opts for a Trial via the AOD, on the Start Date the Customer shall be granted a limited personal licence to use the Software and Documentation for evaluation purposes only for the Trial Period. Upon expiry of the Trial Period, this Agreement shall terminate automatically without notice, unless the Customer notifies the Supplier via the AOD that it wishes to continue its use of the Software and Documentation, in which case the Supplier shall grant a licence to use the Software and Documentation in accordance with clause 2.



### 7.3 Termination

- A. The Supplier may terminate this Agreement immediately by written notice if the Customer commits a material or persistent breach of this Agreement which it fails to remedy (if remediable) within 14 days after the service of written notice requiring it to do so.
- B. If at any time Supplier for any reason decides to cease general provision of the Software, Supplier may, on providing not less than thirty (30) days' notice to Customer, cease to provide any further maintenance services pursuant to clause 9.
- C. Upon termination of this Agreement for whatsoever reason:
  - a. Customer is not entitled to a refund for any pre-paid Subscription Fees, and the Customer must immediately pay to the Supplier any sums due to the Supplier under this Agreement;
  - b. all rights granted to the Customer under this Agreement shall cease;
  - c. the Customer must immediately cease all activities authorised by this Agreement; and
  - d. the Customer shall (upon written request from the Supplier) immediately delete or remove the Software from all computer equipment in its possession, and immediately destroy or return to the Supplier (at its option) all copies of the Software and Documents then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so.
- D. Expiry or termination of this Agreement shall be without prejudice to the accrued rights and obligations of parties hereunder.

## 8. General Provisions

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### 8.1 Entire Agreement

If the Customer is a business customer, this Agreement and any document expressly referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral, relating to its subject matter. The Customer 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 or any document expressly referred to in it. The Customer agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this in this Agreement or any document expressly referred to in it.

### 8.2 Variation

Except as otherwise provided in this Agreement, Supplier may amend the Terms & Conditions of this Agreement (“**Amended Terms**”) by online notice to the Customer. Unless Customer is notified to the contrary by Supplier, such Amended Terms shall only apply with effect from the subsequent Renewal Period.

### **8.3 Force Majeure**

Supplier shall not be liable for any delay or failure in performing hereunder if caused by factors beyond its reasonable control, such as (without limitation) acts of God, power failure, equipment failure, failure of telecommunications or Internet services, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, industrial or labour dispute, inability to obtain necessary supplies and the like.

### **8.4 Notices**

- A. If the Customer is a consumer, and it wishes to contact the Supplier in writing, or if any provision of this Agreement requires it to give the Supplier notice in writing, it may do so by e-mail or by pre-paid post to Experts for Integrated Solutions Ltd at Park House, 1-4 Park Terrace, Worcester Park, Surrey KT4 7JZ, UK or [info@issexperts.co.uk](mailto:info@issexperts.co.uk). The Supplier shall confirm receipt of this by contacting the Customer in writing, normally by e-mail.
- B. If the Supplier needs to contact the Customer or give the Customer notice in writing, it will do so by e-mail or by pre-paid post to the address the Customer provides to the Supplier in its order for the Software.
- C. If the Customer is a business customer, any notice given by the Customer to the Supplier, or by the Supplier to the Customer, will be deemed received and properly served immediately when posted on our website, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.
- D. This clause 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.

### **8.5 Governing Law and Jurisdiction**

- E. If the Customer is a consumer, this Agreement, its subject matter and its formation, shall be governed by English law. The Customer and Supplier both agree to that the courts of England and Wales will have non-exclusive jurisdiction. However, if the Customer is a resident of Northern Ireland it may also bring proceedings in Northern Ireland, and if it is a resident of Scotland, it may also bring proceedings in Scotland.
- F. If the Customer is a business customer, this Agreement, its subject matter and its formation (and any non-contractual disputes or claims) shall governed by English law. Both parties irrevocably agree to the exclusive jurisdiction of the courts of England and Wales.

### **8.6 Assignment**

- A. Supplier may transfer its rights and obligations under this Agreement to another organisation, but this will not affect the Customer's rights or obligations under this Agreement.
- B. The Customer may only transfer its rights or obligations under this Agreement to another person or organisation with the Supplier's prior written consent (not to be unreasonably withheld or delayed).

## 8.7 Waiver

Failure of any party to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

## 8.8 Survival

Any provision of this Agreement that 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.

## 8.9 Conflict

If there is an inconsistency or conflict between any of the provisions the AOD and these Terms & Conditions, the AOD shall prevail to the extent of such conflict.

## 8.10 Severance

Each of the provisions of this Agreement operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining provisions will remain in full force and effect.

## 9. Maintenance and Support Services

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### 9.1 Updates

Supplier may provide Updates to and / or New Versions for the Software to Customer. Customer will be responsible for installing any such updates and / or New Versions. However, Supplier will provide technical support for all versions of the Software.

### 9.2 Electronic Support

Supplier will provide electronic support for purposes of handling Customer questions relating to the operation of the Software. Electronic support is provided by Supplier's Customer Training and Support Team; see the Website for further details.

## 10. Installation and Training Services

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### 10.1 Installation of the Software

The Supplier provides an Installation Manual that can be downloaded from the Website. The Installation Manual describes in details the Software Installation and Activation Procedures. Installation of the Software is the responsibility of Customer.

### 10.2 Training

The Supplier provides online training. The Customer should contact the Supplier to mutually agree on the date, time, and cost of the online training.



***BlindCell Empowering your SMS Security***

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