

TERMS AND CONDITIONS FOR IT SERVICES

1. Application

- 1.1 These Terms and Conditions shall apply to the provision of IT Services by the Provider to the Customer.
- 1.2 In the event of conflict between these Terms and Conditions and any other terms and conditions (of the Customer or otherwise), the former shall prevail unless expressly otherwise agreed by the Provider in writing.

2. Definitions and Interpretation

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Agreement”	Means the agreement or purchase order entered into by the Customer and the Provider to which these Terms and Conditions apply;
“Business Day”	means, any day (other than Saturday and Sunday) on which ordinary banks are open for [their full range of normal] business in London;
“Commencement Date”	means the commencement date for these Terms and Conditions as set out in the Specification of Services Schedule to these Terms and Conditions, if completed;
“Confidential Information”	means all business, technical, financial or other information of a Party to the Agreement;
“Customer”	Recipient of service provided by the Provider;
“Data Protection Legislation”	means 1) unless and until EU Regulation 2016/679 General Data Protection Regulation (“GDPR”) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations, and secondary legislation (as amended from time to time), in the UK and subsequently 2) any legislation which succeeds the GDPR;
“Provider”	Shortlisters Ltd, Trading as BlueCircle IT, a company registered in England under number 05889978 whose registered office is at 4 Hawthorn Grove, Enfield, EN2 0DU.
“Services”	means the services to be provided by the Provider to the Customer as set out in the Specification of Services Schedule, or as agreed;
“Equipment”	means the Equipment listed in the Equipment Schedule and shall include all updated or replacement parts and any additional equipment supplied by the Provider, if in place;

- “Fees”** means any and all sums payable by the Customer to the Provider arising out of the performance of the Provider’s obligations under these Terms and Conditions;
- “Software”** means any and all programs, applications, instructions or similar that may from time to time be installed on the Customer’s computer systems; and
- “Working Hours”** means the normal working hours of the Provider which are 09.00 – 17.30 Monday to Friday.

- 2.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 2.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 2.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 2.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions and each of the Schedules as amended or supplemented at the relevant time as agreed;
 - 2.2.4 a Schedule is a schedule to these Terms and Conditions;
 - 2.2.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule; and
 - 2.2.6 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.
- 2.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 2.4 Words imparting the singular number shall include the plural and vice versa.
- 2.5 References to any gender shall include the other gender.

3. **Provider’s Obligations**

- 3.1 With effect from the Commencement Date until any termination under Clause 8 the Provider shall, in consideration of the Fees being paid in accordance with the terms of payment, provide the Services expressly identified in the Specification of Services Schedule, or otherwise agreed under these Terms and Conditions.
- 3.2 The Provider will use reasonable care and skill to perform the Services identified in the Specification of Services Schedule or otherwise agreed under these Terms and Conditions.
- 3.3 The Provider will, subject to Clause 4, use reasonable endeavours to maintain the functionality of any Software which may be installed or otherwise operative on the Customer’s Equipment and undertakes to re-install any Software which may have been corrupted or otherwise made unavailable due to hardware failure and to render such technical assistance as may be necessary to secure the satisfactory operation of the Equipment and Software.

- 3.4 The Provider will not guarantee the performance of any Software which the Provider has undertaken to re-install under sub-Clause 3.3.
- 3.5 The Provider shall use all reasonable endeavours to complete its obligations under the Specification of Services Schedule. The Parties agree that time will not be of the essence in the performance of these obligations.

4. Customer's Obligations

- 4.1 The Customer shall:
 - 4.1.1 allow the Provider access to the Equipment and all relevant Software for investigation purposes;
 - 4.1.2 provide adequate working space and facilities for the Provider's staff; and
 - 4.1.3 co-operate with them in the diagnosis of any defect or malfunction in the Equipment or Software.
- 4.2 The Customer shall allow the Provider the use of any Equipment, computer systems, peripherals or other hardware necessary to enable it to provide the Services and shall be responsible for procuring, installing and maintaining any of the above mentioned if not supplied by the Provider.
- 4.3 The Customer will not allow any changes or modifications to the Software to be made by any party other than those changes or modifications authorised by, and notified to, the Provider. If such changes or modifications are carried out without such authorisation and appropriate notification, the Provider reserves the right to review these Terms and Conditions and make adjustments accordingly.
- 4.4 The Customer will make freely available to the Provider all documentation associated with the Equipment, working documents, original Software installation media, current data backups, Equipment and any other relevant hardware for the efficient maintenance of the Equipment and the Software.
- 4.5 The Customer shall create regular data backups in such a manner as to minimise any potential data loss and to ensure that these are made available to the Provider as required.
- 4.6 The Customer shall take all reasonable precautions to ensure the safety and health of the Provider's personnel while such personnel are at the Customer's premises.

5. Price

- 5.1 The Customer agrees to pay the Fees in accordance with Clause 6 and the Specification of Services Schedule.
- 5.2 The Provider shall be entitled to recover from the Customer its reasonable incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the Services.
- 5.3 The Customer shall pay the Provider for any additional services provided by the Provider that are not specified in the Specification of Services Schedule in accordance with the Provider's hourly rate in effect at the time of the performance or such other rate as may be agreed. Any such charge for additional services shall be invoiced separately from any Fees due under the

Specification of Services Schedule and as per the timesheet provided.

- 5.4 All sums payable by either Party pursuant to these Terms and Conditions are exclusive of any value added or other tax or other taxes on profit, for which that Party shall be additionally liable.

6. Payment

- 6.1 All payments required to be made pursuant to these Terms and Conditions by either Party shall be made within 30 days of the date of the relevant invoice, without any set-off, withholding or deduction except such amount (if any) of tax as that party is required to deduct or withhold by law.
- 6.2 The time of payment shall be of the essence of these terms and conditions. If the Customer fails to make any payment on the due date in respect of any sum due under these Terms and Conditions then the Provider shall have the right to charge the Customer interest on any sum outstanding at the rate of 3% above the base rate of Barclays Bank PLC from the due date for payment until the date on which the payment is received.

7. Variation and Amendments

- 7.1 If the Customer wishes to vary any details of the Specification of Services Schedule it must notify the Provider in writing as soon as is reasonably possible. The Provider shall use all reasonable endeavours to make any required changes and any additional costs thereby incurred shall be separately invoiced to the Customer.
- 7.2 If, due to circumstances beyond the Provider's control, it has to make any change in the arrangements relating to the provision of the Services it shall notify the Customer forthwith. The Provider shall endeavour to keep such changes to a minimum and shall seek to offer the Customer arrangements as close to the original arrangements as is reasonably possible in the circumstances.

8. Termination

- 8.1 The Provider may terminate the Agreement forthwith if:
- 8.1.1 the Customer is in breach of any of its obligations hereunder;
 - 8.1.2 the Customer has entered into liquidation (other than for the purposes of a bona fide amalgamation or reconstruction) whether compulsory or voluntarily or compounds with its creditors generally or has an administrator, administrative receiver or receiver appointed over all or a substantial part of its undertaking or assets;
 - 8.1.3 the Customer has become bankrupt or shall be deemed unable to pay its debts by virtue of Section 123 of the Insolvency Act 1986;
 - 8.1.4 the Customer ceases or threatens to cease to carry on business; or
 - 8.1.5 the Provider is delayed in performing or fails to perform any of the Provider's obligations due to any cause beyond the Provider's reasonable control in circumstances where, having proper regard to the nature and extent of the actual or likely future disruption to the Services

due to that cause, it considers that it cannot effectively provide, or any longer provide, the Services.

- 8.2 In the event of termination under clause 8.1 the Provider shall retain any sums already paid to it by the Customer without prejudice to any other rights that either party may have whether at law or otherwise.

9. **Liability**

- 9.1 The Customer shall indemnify the Provider against all damages, costs, claims and expenses suffered by the Provider arising from loss or damage to any equipment (including that of third parties) caused by the Customer, or its agents or employees.

- 9.2 The Provider will indemnify the Customer for personal injury or death caused by the Provider's negligence in connection with the performance by the Service Provider of the Services.

- 9.3 The Provider will indemnify the Customer for direct damage to tangible property caused by the Provider's negligence in connection with the performance of the Services. The Provider's total liability under this sub-Clause shall be limited to £1,000,000 for any one event or series of connected events.

- 9.4 In no event will the Provider be liable by reason of any breach by it of any of these Terms and Conditions or breach by it of any implied warranty, condition or other term of the Agreement, or any negligent or innocent misrepresentation, or any negligence or other duty at common law, for any:

9.4.1 loss of or damage to data;

9.4.2 loss of use of data;

9.4.3 loss of use of any hardware or software;

9.4.4 interruption to business;

9.4.5 loss of income or revenue, ;

9.4.6 loss of profit, contracts, business, business opportunity, or goodwill;

9.4.7 loss of anticipated savings; or

9.4.8 any indirect, special or consequential loss, damage, costs, expenses or other claims, whether or not the same were reasonably foreseeable or actually foreseen

arising from any act or omission of the Provider in connection with the performance of its obligations under the Agreement.

- 9.5 Except as provided above in the case of personal injury, death and damage to tangible property, and below as to fraud or fraudulent misrepresentation, the Provider's maximum liability to the Customer under the Agreement or otherwise for any cause whatsoever (whether in the form of the additional cost of remedial services or otherwise) will be limited to a sum equivalent to the price paid up until the point of claim to the Provider for the Services that are the subject of the Customer's claim, plus damages limited to 25% of the same amount for any additional costs directly, reasonably and necessarily incurred by the Customer in obtaining alternative products and/or services

- 9.6 The Parties acknowledge and agree that the limitations contained in this Clause 9 are reasonable in the light of all the circumstances.

- 9.7 These limitations shall apply cumulatively, and shall apply regardless of the form of action, whether under statute, in contract or tort, including negligence, or any other form of action.
- 9.8 Nothing in these Terms and Conditions is intended to or will exclude or limit the Provider's liability for death or personal injury caused by the Provider's negligence, or for fraud or fraudulent misrepresentation by the Provider.
- 9.9 For the purposes of this clause, the 'Provider' includes its employees, sub-contractors and suppliers.
- 9.10 The employees, sub-contractors and suppliers of the Provider shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999.

10. Confidentiality

- 10.1 During the term of the Agreement [and after termination of the Agreement for any reason for a period of 6 months, the following obligations shall apply to the Party disclosing Confidential Information ('the Disclosing Party') to the other Party ('the Receiving Party').
- 10.2 Subject to sub-Clause 10.3, the Receiving Party:
 - 10.2.1 may not use any Confidential Information of the Disclosing Party for any purpose other than the performance of its obligations under the Agreement;
 - 10.2.2 may not disclose any Confidential Information of the Disclosing Party to any person except with the prior written consent of the Disclosing Party; and
 - 10.2.3 shall make every effort to prevent the use or disclosure of the Confidential Information of the Disclosing Party.
- 10.3 The obligations of confidence referred to in the provisions of this Clause shall not apply to any Confidential Information of the Disclosing Party that:
 - 10.3.1 is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain before its receipt by the Receiving Party;
 - 10.3.2 is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;
 - 10.3.3 is required to be disclosed by any applicable law or regulation;
 - 10.3.4 is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the Disclosing Party in respect of it and who imposes no obligations of confidence upon the Receiving Party.
- 10.4 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this clause in addition to any damages or other remedies to which it may be entitled.
- 10.5 The obligations of the Parties under the provisions of this clause shall survive the expiry or the termination of the Agreement for whatever reason.

11. Data Protection

- 11.1 All personal information that the Provider may use will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation (“GDPR”) and the Customer’s rights under the GDPR.
- 11.2 For complete details of the Provider’s collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the Customer’s rights and how to exercise them, and personal data sharing (where applicable), please refer to the Provider’s Privacy Notice (available at www.bluecircleit.co.uk).

12. Data Processing

- 12.1 In this Clause 12 and in the Agreement, “personal data”, “data subject”, “data controller”, “data processor”, and “personal data breach” shall have the meaning defined in Article 4, EU Regulation 2016/679 General Data Protection Regulation (“GDPR”).
- 12.2 Both Parties shall comply with all applicable data protection requirements set out in the Data Protection Legislation. Neither this Clause 12 nor the Agreement shall relieve either Party of any obligations set out in the Data Protection Legislation and shall not remove or replace any of those obligations.
- 12.3 For the purposes of the Data Protection Legislation and for this Clause 12 and the Agreement, the Provider is the “Data Processor” and the Customer is the “Data Controller”.
- 12.4 The type(s) of personal data, the scope, nature and purpose of the processing, and the duration of the processing shall be set out in a Schedule to the Agreement.
- 12.5 The Data Controller shall ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to the Data Processor for the purposes described in these Terms and Conditions.
- 12.6 The Data Processor shall, with respect to any personal data processed by it in relation to its performance of any of its obligations under these Terms and Conditions:
 - 12.6.1 Process the personal data only on the written instructions of the Data Controller unless the Data Processor is otherwise required to process such personal data by law. The Data Processor shall promptly notify the Data Controller of such processing unless prohibited from doing so by law.
 - 12.6.2 Ensure that it has in place suitable technical and organisational measures (as approved by the Data Controller) to protect the personal data from unauthorised or unlawful processing, accidental loss, damage or destruction. Such measures shall be proportionate to the potential harm resulting from such events, taking into account the current state of the art in technology and the cost of implementing those measures. Measures to be taken shall be agreed between the Data Controller and the Data Processor and set out in the Schedule to the Agreement.

- 12.6.3 Ensure that any and all staff with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential; and
- 12.6.4 Not transfer any personal data outside of the European Economic Area without the prior written consent of the Data Controller and only if the following conditions are satisfied:
 - 12.6.4.1 The Data Controller and/or the Data Processor has/have provided suitable safeguards for the transfer of personal data;
 - 12.6.4.2 Affected data subjects have enforceable rights and effective legal remedies;
 - 12.6.4.3 The Data Processor complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred; and
 - 12.6.4.4 The Data Processor complies with all reasonable instructions given in advance by the Data Controller with respect to the processing of the personal data.
- 12.6.5 Assist the Data Controller at the Data Controller's cost, in responding to any and all requests from data subjects in ensuring its compliance with the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators (including, but not limited to, the Information Commissioner's Office);
- 12.6.6 Notify the Data Controller without undue delay of a personal data breach;
- 12.6.7 On the Data Controller's written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Data Controller on termination of the Agreement unless it is required to retain any of the personal data by law; and
- 12.7 The Data Processor shall not sub-contract any of its obligations with respect to the processing of personal data under this Clause 12.

13. **Sub-Contracting and Assignment**

- 13.1 The Provider may sub-contract to third parties all or any part of the Services to be carried out under the Agreement.
- 13.2 The Customer shall not assign to a third party any or all of its rights or obligations under the Agreement without the prior written consent of the Provider.

14. **Force Majeure**

Neither Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

15. Waiver

15.1 No waiver by the Provider of any breach of these Terms and Conditions by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of these Terms and Conditions shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which any waiver is given.

15.2 No failure or delay on the part of any Party in exercising any right, power or privilege under these Terms and Conditions shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of or the exercise of any other right, power or privilege.

16. Severance

If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected thereby.

17. Notices

17.1 All notices under these Terms and Conditions shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

17.2 Notices shall be deemed to have been duly given:

17.2.1 when delivered, if delivered by courier or other messenger (including recorded delivery mail) during normal business hours of the recipient; or

17.2.2 when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or

17.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

17.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

in each case addressed to the most recent address or e-mail address notified to the other Party.

17.3 Service of any document for the purposes of any legal proceedings concerning or arising out of the Agreement shall be effected by either Party by causing such document to be delivered to the other Party at its registered or principal office, or to such other address as may be notified to one Party by the other Party in writing from time to time.

18. Dispute Resolution (ADR and Arbitration)

18.1 The parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

- 18.2 If negotiations under sub-Clause 18.1 do not resolve the matter within 21 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure.
- 18.3 If the ADR procedure under sub-Clause 18.2 does not resolve the matter within 28 days of the initiation of that procedure, or if either party will not participate in the ADR procedure, the dispute may be referred to arbitration by either party.
- 18.4 The seat of the arbitration under sub-Clause 18.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the parties. In the event that the parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either party may, upon giving written notice to the other party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.
- 18.5 Nothing in this Clause 18 shall prohibit either party or its affiliates from applying to a court for interim injunctive relief.
- 18.6 The parties hereby agree that the decision and outcome of the final method of dispute resolution under this Clause 18 shall be final and binding on both parties.

19. **Law and Jurisdiction**

- 19.1 The Agreement shall be governed by the laws of England and Wales.
- 19.2 Any dispute between the Parties relating to the Agreement shall fall within the exclusive jurisdiction of the courts of England and Wales.