



TERMS AND CONDITIONS OF BUSINESS

- (1) bluesource is engaged in the business of providing information technology and computer services.
- (2) In reliance upon bluesource's skill, knowledge and experience, the Company wishes to engage bluesource to provide Services, as set out more specifically in a Service Schedule, and bluesource has agreed to accept the engagement on the terms and conditions of this agreement (the "Agreement").

IT IS AGREED as follows:

1 Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

- "Acceptance in to Service"** also referred to as "AIS", applicable to only certain Service Schedules, refers to the period from the date of the initial assessment phase following acceptance of an Order until the Services go live on the Customer's systems
- "Agreement"** this document, together with the Service Schedule, annexures and any other attachments to this document and/or the Service Schedule;
- "Anniversary Date"** the date on which the Initial Term expires and the anniversary date of subsequent renewals;
- "Business Day"** 08:00 – 18:00 BST/GMT, as appropriate, on a day other than a Saturday, Sunday or a public or bank holiday in England and Wales or Scotland;
- "Commencement Date"** the date on which this Agreement comes into force pursuant to clause 9 below;
- "Company"** the person, firm or company purchasing Services from bluesource as identified in a Service Schedule;
- "Company Equipment"** the technical equipment belonging to or to be provided by the Company for use by bluesource in the provision of the Services;
- "Confidential Information"** in relation to either Party, all confidential information disclosed to a Party or its employees, officers, representatives or advisors by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether labelled as confidential or not);
- "Consultancy"** professional service work provided by bluesource to the Company for a specific piece of work or project, which may or may not be related to the Services;
- "Documents"** includes, but is not limited to, inventions, improvements, formulae, designs, programs, drawings, manuals, Source Codes, plans and any design documents prepared by bluesource as provided in the Service Schedule;
- "Fees"** the price to be paid by the Company to bluesource as set out in the Service Schedule, as amended by the Parties in writing from time to time;
- "Group"** the "holding" and "subsidiary" companies of the Parties as defined in section 1159 of the Companies Act 2006;
- "Initial Term"** the initial Term specified in the Service Schedule;
- "Intellectual Property Rights"** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- "Losses"** any losses, actions, costs, liabilities, expenses (including reasonable legal expenses), demands, claims and damages;
- "Party"** a party to this Agreement and **Parties** shall be construed accordingly.

“Premises”	the Company’s Premises as specified in the Service Schedule or such other Premises as may be agreed in writing from time to time between the Parties;
“Services”	the services to be provided by bluesource to the Company as described in the Service Schedule;
“Service Schedule”	the “Service Schedule” detailing the Service/s to be provided to the Company which is governed by the terms of this Agreement;
“Source Code”	computer software in eye-readable and other such form that it can be compiled or interpreted to produce equivalent computer software in object code, together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such software;
“Term”	the term of this Agreement;
“Third Party”	any individual, firm or company who does not have a direct connection with the Company or bluesource, such as a software vendor;
“Third Party Product”	a product produced or marketed by a Third Party; and
“US Business Day”	Monday to Friday 09:00 – 18:00 CST (excluding US public holidays).

1.2 Unless the context otherwise requires, each reference in this Agreement to:

- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic, facsimile transmission or similar means;
- 1.2.2 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;
- 1.2.3 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented from time to time;
- 1.2.4 a Schedule is a schedule to this Agreement; and
- 1.2.5 a clause or paragraph is a reference to a clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.

1.3 Headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

2 Provision of the Services

2.1 During the Term bluesource shall provide the Services to the Company in accordance with the Service Schedule and the Company shall promptly obtain, maintain and make available any assets, Company Equipment, Premises, personnel, and other facilities reasonably required for the provision of the Services, as shall be set out in the Service Schedule or as may be agreed between the Parties in writing from time to time.

2.2 bluesource shall provide the Services at the Company’s Premises or such other premises as agreed in writing between the Parties from time to time.

2.3 If bluesource fails to provide any of the Services in accordance with this Agreement or is aware of anything that would adversely affect the provision of the Services, bluesource shall notify the Company in writing and shall undertake such remedial action within 28 days of the breach occurring or the date on which bluesource should reasonably have been aware of the breach whichever is the earlier.

3 Service Schedules – Order for Service

Service Schedules shall be agreed in accordance with this clause:

3.1 The Company shall provide bluesource with a request for Services via an “Order”, setting out its requirements and specifications, including:

- 3.1.1 a description of what work is to be done and its scope;
- 3.1.2 date(s) by which any work has been requested to start and finish;
- 3.1.3 Term of the Services to be provided;
- 3.1.4 address and contact details for the Company;
- 3.1.5 commercials relating to the Services;

- 3.1.6 deliverables (if any); and
- 3.1.7 such other information as bluesource may reasonably request to prepare a draft Service Schedule.
- 3.2 bluesource shall, as soon as reasonably possible, provide the Company with a draft Service Schedule.
- 3.3 bluesource and the Company shall discuss and agree the Service Schedule and when it has been agreed, they shall both sign a copy of it and it shall become subject to this Agreement.
- 3.4 A Service Schedule shall not be legally binding or have any effect unless:
 - 3.4.1 it contains the information specified in clause 3.1;
 - 3.4.2 both Parties have signed it; and
 - 3.4.3 at the date of the Service Schedule, this Agreement has not terminated.
- 3.5 No amendment shall be made to the Service Schedule except as agreed in writing between the Parties.

4 Company's Obligations

- 4.1 The Company shall:
 - 4.1.1 allow bluesource and their employees access to the Premises during Business Days, for the purposes of providing the Services. Any access requested outside Business Days will be agreed in advance with the Company and with reasonable notice;
 - 4.1.2 provide bluesource with such information as may be required by bluesource in connection with the performance of the Services in a timely manner, and if so requested prior to the commencement of the Services, and shall ensure such information is accurate;
 - 4.1.3 provide bluesource with all necessary literature, books, policies and other material which the Company requires to be observed by bluesource and its employees, agents and contractors, such as security policies and Health and Safety handbooks;
 - 4.1.4 be responsible (at its own cost) for preparing the Premises for the supply of the Services;
- 4.2 If bluesource's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Company or the Company's agents, sub-contractors or employees, the Company shall in all circumstances be liable to pay to bluesource on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to bluesource confirming such costs, charges and losses to the Company in writing. This clause 4.2 shall survive termination of this Agreement.
- 4.3 bluesource may charge the Company for any additional reasonable costs and expenses properly incurred by bluesource caused directly as a result of any change control or any failure on the part of the Company to provide instructions in a reasonable and timely manner.

5 Mutual Obligations

- 5.1 The Company and bluesource shall each use reasonable endeavours to keep each other informed of any special requirements applicable to the Services, such as changes to regulatory compliance in their respective industries. To the extent necessary and appropriate, bluesource shall take reasonable steps to comply with such special requirements. Without any increase in the Fees payable pursuant to clause 8 below unless otherwise agreed as appropriate between the Parties.
- 5.2 If the Company or any Third Party omit or do anything which prevents or delays bluesource from undertaking or complying with any of its obligations under this Agreement, bluesource shall not have any liability in respect of any such delay or failure in the provision of the Services.
- 5.3 The Company will allow bluesource, its agents, contractors and employees such use of the Company's Equipment as is reasonably required for the purpose of providing the Services. Authorisation procedures in relation to use of hardware or access to the Company's systems will be agreed between the Company and bluesource in writing. bluesource shall use the Company's Equipment:
 - 5.3.1 only for the purposes of providing the Services; and
 - 5.3.2 in accordance with good computing practice.

6 bluesource Obligations

- 6.1 During the Term bluesource shall:
 - 6.1.1 ensure that the Services are provided with the care, skill and diligence required of a professional firm in accordance with the terms of this Agreement and best practice in bluesource's industry, profession or trade;

- 6.1.2 ensure that the Services are performed by the personnel who are technically competent and properly qualified to provide the Services and ensure that such personnel comply with the Company's policies when attending the Premises to the extent the same have been provided in advance to bluesource;
 - 6.1.3 keep detailed records of all activities undertaken in connection with the provision of the Services and at the Company's reasonable request make such records available for inspection and/or provide copies to the Company, at the Company's expense; and
 - 6.1.4 comply with the reasonable instructions of the Company.
- 6.2 During the Term bluesource shall maintain suitable insurance policies that it deems reasonable in connection with the provision of the Services.

7 Third Party Licences

- 7.1 bluesource shall:
- 7.1.1 procure a licence for the Company to use any software, programs or applications supplied by bluesource under the Service Schedule; and
 - 7.1.2 use reasonable endeavours to procure that any licences for Third Party products, including but not limited to any software to be purchased on behalf of the Company, as defined in the Service Schedule, contain terms which will allow the Company to use, adapt, maintain and support such Third Party Products or to allow new service providers to do so following termination.
- 7.2 The Company shall licence or procure a licence for the use of any software, programs or applications which are not supplied by bluesource under the Service Schedule but which are required for the Services at its own cost, including but not limited to Server Operating systems, Anti-Virus software and Backup software and shall procure that bluesource shall be entitled to use such licences on an unrestricted basis for the purposes of performing the Services.

8 Payments and Records

- 8.1 In consideration of the Services the Company shall pay to bluesource:
- 8.1.1 the Fees (exclusive of any value added tax); and
 - 8.1.2 such additional charges (if any) as are from time to time agreed in writing between bluesource and the Company, having regard to any services provided by bluesource in addition to those specified in the Agreement or the Service Schedule payable at bluesource's then current rates.
- 8.2 The Company shall reimburse bluesource for all expenses properly incurred in the provision of the Services and agreed with the Company in advance, such as site visits and will be payable at the following rates:
- 8.2.1 mileage at £0.45 per mile;
 - 8.2.2 travel at standard/economy class fares;
 - 8.2.3 accommodation shall not exceed £80 per night without prior agreement; and
 - 8.2.4 subsistence shall not exceed £7.50 per day for breakfast, £7.50 per day for Lunch and £20 per evening for dinner.
- 8.3 The Company shall pay each invoice submitted by bluesource in full and cleared funds within 30 days of receipt in pounds sterling.
- 8.4 All sums payable pursuant to this Agreement are exclusive of any value added or other tax which shall be added to bluesource's invoices at the prevailing rate.
- 8.5 Without prejudice to any of its other rights or remedies if the Company fails to pay on the due date for payment, bluesource may:
- 8.5.1 charge interest, from the date due for payment to the date of payment in full, at 2% per annum over Lloyds TSB Bank Plc base rate from time to time; and/or
 - 8.5.2 suspend the Services without liability to the Company, until payment is received in full. Suspension of the Services under these circumstances is excluded from any availability measures or other SLAs.
- 8.6 Should any scheduled consultancy services be cancelled or rescheduled after the booking has been confirmed, the Company will be liable to pay the Fees (exclusive of any value added tax) as they fall due in accordance with the Service Schedule at the following percentages:
- 8.6.1 more than 5 days' notice 0%;
 - 8.6.2 between 5 days and 48 hours' notice 25%;
 - 8.6.3 between 48 hours and 24 hours' notice 50%; and

8.6.4 less than 24 hours' notice 100%.

8.7 The Company may not withhold payment of, or make any deduction from, any invoice or other amount due to bluesource by reason of any right of set-off or counterclaim which the Company may have or allege to have or for any other reason whatsoever.

9 Term and Termination

9.1 This Agreement shall commence on the date it is signed and shall continue until completion of the Services in accordance with the Service Schedules, subject to earlier termination in accordance with this clause 9.

9.2 Notwithstanding any other provision in this Agreement, any consultancy work included as part of a Service Schedule will terminate once the work, project, or engagement has been confirmed as complete by the Company.

9.3 Either Party may terminate this Agreement or any Service Schedule by giving to the other not less than 90 calendar days' written notice after expiry of the Initial Term. The date of termination will be determined based on the then outstanding Service Schedules which the Company and bluesource will mutually agree on. In the case of such termination, the provisions of clause 9.6 shall apply.

9.4 Without prejudice to bluesource's other rights or remedies, bluesource may immediately terminate this Agreement and/or any Service Schedules placed pursuant to this Agreement by serving written notice if any charges, such as Fees, owing under this Agreement or any Service Schedule are not paid within 30 calendar days of the Due Date for payment.

9.5 Either Party may immediately terminate this Agreement by giving written notice to the other Party if:

9.5.1 any charges, such as Fees, owing under this Agreement or any Service Schedule are not paid within 30 calendar days of the due date for payment and in accordance with clause 9.6;

9.5.2 either Party commits a material breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 28 calendar days after receiving written notice specifying particulars of the breach requiring it to be remedied;

9.5.3 a receiver is appointed over any of the property or assets of that other Party;

9.5.4 either Party becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

9.5.5 either Party goes into liquidation (except for the purposes of amalgamation or re-construction and in such a manner that the Company resulting there from effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);

9.5.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other Party;

9.5.7 either Party ceases, or threatens to cease, to carry on business.

9.6 Notwithstanding any other termination of this Agreement:

9.6.1 all Service Schedules shall nevertheless continue in full force and effect for the remainder of the term of such Service Schedule, unless terminated in accordance with the terms of such Service Schedule; and

9.6.2 termination of any Service Schedule shall not affect any other Service Schedule or this Agreement.

9.7 This Agreement shall automatically terminate on the termination of all Service Schedules by either party.

9.8 On termination of a Service Schedule or this Agreement the Company shall immediately pay to bluesource all of bluesource's outstanding unpaid invoices and interest in respect of Services supplied but for which no invoice is submitted, bluesource shall submit an invoice, which shall be payable immediately on receipt.

9.9 For the purposes of clause 9.5.2, a breach shall be considered capable of remedy if the defaulting Party can comply with the provision in question in all respects other than as to the timescales for performance.

9.10 The rights under this clause 9 shall not prejudice any other right or remedy of either Party.

9.11 All provisions of this Agreement which are, expressly or by necessary implication, intended to survive termination shall remain in full force and effect following termination.

10 Dispute Resolution

10.1 If a dispute arises under this agreement (**Dispute**), including any Dispute arising out of any amount due to a Party, then before bringing any suit, action or proceeding in connection with such Dispute, a Party must first give written notice of the Dispute to the other Party describing the Dispute and requesting that it is resolved under this dispute resolution process (**Dispute Notice**).

10.2 If the Parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, then each party will promptly (but no later than five Business Days thereafter):

10.2.1 appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of this Agreement (**Designated Representative**); and

10.2.2 notify the other Party in writing of the name and contact information of such Designated Representative.

10.3 If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, then either Party may refer the matter for mediation by the Centre for Dispute Resolution (**CEDR**) or a similar body for mediation, whose decision shall be binding on the Parties.

10.4 Notwithstanding the foregoing, either party may seek interim or other equitable relief necessary (including an injunction) to prevent irreparable harm.

11 Effects of Termination

Upon the termination of this Agreement for any reason:

11.1 any sum owing under this Agreement or any Service Schedule shall be immediately payable;

11.2 clauses 1, 4.2, 9, 10, this clause 11, 12 to 19 (inclusive), 26 and 21 shall remain in effect;

11.3 any rights or obligations to which any of the Parties to this Agreement may be entitled or be subject before its termination shall remain in full force and effect;

11.4 each Party shall (except to the extent referred to in clause 11.3) forthwith cease to use, either directly or indirectly, any Confidential Information, and shall forthwith return to the other Party any documents in its possession or control which contain or record any Confidential Information (where this is reasonably practicable); and

11.5 if terminated by either Party under clause 9.3, bluesource will be entitled to invoice the Company for payment of costs properly incurred up to the termination date (which may include costs relating to hardware, software, technical services, telecommunications contracts and the balance of any fees which bluesource have paid on behalf of the Company to Third Parties, which were spread over an agreed period of time and documented as part of the monthly service charge) but only to the extent that they are non-cancellable or cannot be reduced in any way by bluesource.

12 Confidentiality

12.1 Each Party undertakes that, except as provided by clause 12.2 or as authorised in writing by the other Party, it shall, at all times:

12.1.1 keep confidential all Confidential Information;

12.1.2 not disclose any Confidential Information to any other person;

12.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;

12.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

12.1.5 ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of this clause 12.1.1.

12.2 bluesource may:

12.2.1 disclose any Confidential Information to:

(a) any approved sub-contractor or supplier of that Party;

(b) any governmental or other authority or regulatory body, where required by law; or

(c) any employee or officer of that Party;

to such extent only as is necessary for the purposes contemplated by this Agreement, or as required by law, and in each case subject to that Party first informing the person in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in clause (b) above or any employee or officer of any such body) obtaining and submitting to the other Party a written undertaking from the person in question, as nearly as practicable in the terms of this clause, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

12.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party, provided that in doing so that Party does not disclose any part of that Confidential Information which is not public knowledge.

12.3 The provisions of this clause 12 shall continue in force, notwithstanding termination.

13 Non Solicitation

- 13.1 Both Parties acknowledge that during the period of the Agreement and for a period of twelve (12) months after its termination or expiry, neither Party shall entice or seek to employ or engage directly or indirectly (without the other Party's prior written agreement) or make or seek to make any offer of employment or engagement to any of the other Party's staff, including any of its subcontractors who have dealt with the other Party in the course of the negotiation, conclusion and performance of this Agreement and also including any staff in the other Party's Group.
- 13.2 Each Party acknowledges that damages may not be an adequate remedy for that Party if the other Party breaches this clause 13 and the non-breaching Party will be entitled to seek injunctive relief and any other equitable remedies with respect to such breach.
- 13.3 If any employee of a Party leaves the employment of that Party as a result of a breach of this clause 13, and commences employment with, or provision of services to, the other Party or any other member of the other Party's Group it shall pay the non-breaching Party 50% of the higher of:
- 13.3.1 the annual salary (including any benefits-in-kind, bonus payments, commissions and other emoluments) of the employee at the date that they ceased to be an employee of non-breaching Party; or
 - 13.3.2 the annual salary of the employee at the time they commence employment by the breaching Party or other member of the breaching Party's Group.
- 13.4 Each Party acknowledges that any such payment is by way of liquidated damages and is a reasonable and genuine pre-estimate of non-breaching Party's losses.
- 13.5 The Parties agree that the provisions of this clause 13 will not apply in the case of any such person responding without enticement to a job advertisement which is capable of being responded to by members of the public (or sections thereof) generally or to transfer of staff pursuant to the operation of Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) following termination of this Agreement.

14 Force Majeure

- 14.1 Neither Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider (ISP) 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 (an "event of force majeure"). Each Party shall, where the context permits, use all reasonable efforts to minimise the effects of the same and notify the other Party forthwith following it becoming aware of such an event of force majeure.
- 14.2 Subject to the affected Party promptly notifying the other Party in writing of the cause and the likely duration of the delay or inability to carry out any obligations pursuant to this Agreement, and subject to the affected Party using all reasonable efforts to recommence performance where possible without delay (including notifying the other Party of an outline of what remedial actions it intends to undertake), the performance of the affected Party's obligations, to the extent affected by the cause, will be suspended during the period that the cause persists. If the event of force majeure has subsisted for a period of 28 calendar day's, bluesource may terminate the Agreement immediately without penalty on written notice to the Company.

15 Costs

Subject to any provisions to the contrary, each Party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

16 Notices

- 16.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised representative of the Party giving the notice.
- 16.2 Notices shall be deemed to have been duly given:
- 16.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 16.2.2 when sent, if transmitted by fax and a successful transmission report or return receipt is generated, provided a copy of such notice is sent by the means defined in Clauses 16.2.1 or 16.2.3; or
 - 16.2.3 on the second business day following mailing, if mailed by national first class mail, postage prepaid; or
 - 16.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid,
- in each case addressed to the most recent address, or facsimile number notified to the other Party.

17 Relationship of the Parties and Publicity

- 17.1 Nothing in this Agreement shall constitute, or be deemed to constitute, a partnership between the Parties or, except as expressly provided, shall it constitute, or be deemed to constitute an agency of any other Party for any purpose.

17.2 Neither Party shall use the trademarks or the name of the other Party in connection with any publicity or other materials without the prior written consent of the other Party.

17.3 Subject to any express provisions to the contrary in this Agreement, bluesource shall have no right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the Company or bind the Company in any way.

18 Liability and Indemnity

18.1 Subject to clause 19, the Company shall indemnify bluesource against any Losses arising as a result of any material breach by the Company of this Agreement or of any applicable legal or regulatory requirements, save to the extent that the Losses arise as a result of the negligence, misrepresentation, fraud, breach of this Agreement or wilful default of bluesource or any of its agents, delegates, employees or officers. Where bluesource becomes aware of any facts, circumstances or matters whereby it is or may become entitled to claim under clause 18.1, it will inform the Company in writing and in reasonable detail of those facts, circumstances or matters as soon as practicable after it first becomes aware of them.

18.2 bluesource shall, to the extent that it can do so lawfully and without prejudice to its own position, endeavour to take all reasonable steps with a view to mitigating any Losses suffered by it in relation to activities carried out pursuant to this Agreement.

18.3 All dates supplied for delivery and approximate only and time shall not be of the essence of the Agreement.

19 Limitation Of Liability

19.1 Neither Party seeks to limit its liability (if any) in respect to the following: (i) fraud, or (ii) the death of, or personal injury to, any person caused by negligence, or (iii) any liability which cannot be legally capped or excluded.

19.2 Subject to clauses 19.1, 19.3, 19.4, 21.1.4 and 21.3, each of the Company's and bluesource's total aggregate liability under or in relation to this Agreement or any Service Schedule (howsoever arising) shall be limited to £2 Million pounds.

19.3 Subject to clause 19.1, bluesource does not accept any liability under or in relation to this Agreement, any Service Schedule or their subject matter (whether such liability arises due to an indemnity, tort, negligence, breach of contract, misrepresentation or for any other reason) for:

19.3.1 any loss of profits;

19.3.2 loss of sales or turnover;

19.3.3 loss of or damage to reputation;

19.3.4 loss of contracts;

19.3.5 loss of customers;

19.3.6 loss of, or loss of use of, any software or data;

19.3.7 loss of use of any computer or other equipment or plant;

19.3.8 wasted management or other staff time;

19.3.9 losses or liabilities under or in relation to any other contract;

19.3.10 indirect loss or damage;

19.3.11 consequential loss or damage;

19.3.12 loss(es) directly or indirectly due to network access by third parties; or

19.3.13 special loss or damage,

For the purposes of this clause 19 the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

19.4 The Company acknowledges that it is exclusively responsible for:

19.4.1 ensuring the security, completeness and accuracy of all inputs and outputs;

19.4.2 making regular backup copies of its data to ensure recovery of its data; and

19.4.3 the selection, use of and results obtained from any other programs, equipment, materials or services.

20 Sub-Contracting

20.1 The Company accepts that in order for bluesource to deliver the Services to the Company, bluesource may subcontract parts of the Services, in accordance with clause 25.2, provided that any act or omission of a subcontractor shall, for all the purposes of this Agreement, be deemed to be the act or omission of bluesource.

21 Warranties

21.1 bluesource warrants that:

21.1.1 it will use reasonable care and skill in performing the Services and to a standard which conforms to generally accepted industry standards and practices;

21.1.2 all personnel involved in the performance of the Services shall be suitably skilled to perform the tasks assigned to them properly;

21.1.3 the Services will comply in all material respects with any technical specifications set out in the relevant Service Schedule; and

21.1.4 it is either the sole beneficial owner of all Intellectual Property Rights in any work product produced by its employees or subcontractors in connection with or relating to this Agreement and/or the specifications of the Services or it has the right to licence the Intellectual Property Rights to the Company.

21.2 bluesource does not warrant that any result or objective whether stated in this Agreement or not, shall be achieved, be achievable or be attained at all or by a given completion date or any other date.

21.3 The Company warrants to bluesource that all the necessary licenses, permits, rights, consents, registrations, approvals and titles as are necessary in order for bluesource to use or host any software, hardware, documentation or other materials provided by the Company for bluesource's use in the provision of the Services to the Company, including any licenses that the Company is required to procure pursuant to any Services, shall be in full force and effect throughout the Term of this Agreement and undertakes to indemnify and keep indemnified bluesource indemnified in full against any Third Party Intellectual Property claim relating to same.

22 Personal Data

22.1 In this clause the "Act" means the Data Protection Act 1998 and, where appropriate, terms used in this clause shall have the meanings ascribed to them in the Act.

22.2 To the extent that bluesource carries out processing of any personal data (as defined in the Act) in connection with this Agreement, bluesource acknowledges and agrees as follows:

22.2.1 bluesource shall only process data in accordance with the Company's instructions and to the extent necessary for the purposes set out in this Agreement and in particular will:

- (a) implement appropriate technical and organisational measure to protect the Company's personal data against authorised or unlawful possession or accidental loss or damage; and
- (b) perform its obligations in accordance with the Act and any other legislation in any jurisdiction which is applicable to bluesource's use of personal data; and
- (c) the Company only transfers personal data to countries outside the EEA that ensure an adequate level of protection for the rights of the data subject.

22.3 This Agreement does not transfer ownership of, or create any licence in any Intellectual Property Rights in any (non-personal) data.

23 Ownership; No Implied Licences

23.1 As between bluesource and Company, bluesource owns and shall continue to own all rights in the bluesource technology, any inventions and improvements thereto made by bluesource, its employees, contractors or agents. No implied licences or any other right or licence under any Intellectual Property Rights of bluesource are made under this Agreement except as expressly set out in this Agreement or Service Schedule.

23.2 The Parties acknowledge that if the Service includes software or services owned by and proprietary to a Third Party and that it is used under the terms of the Third Party. bluesource will ensure that the Company are made aware of and accept the terms of the Third Party Licence as outlined in a Service Schedule.

24 Anti-Bribery and Anti-Corruption

24.1 bluesource will:

24.1.1 comply with all applicable laws relating to anti-bribery and/or anti-corruption and with the Company's own anti-corruption policy as updated from time to time and provided to bluesource;

24.1.2 promptly notify the Company of:

- (a) any request or demand for any financial or other advantage received by it or any other person who performs services for or on behalf of it in connection with this Agreement; and
- (b) any financial or other advantage it gives or intends to give, whether directly or indirectly in connection with this Agreement; and
- (c) any breach of this clause 24; and
- (d) provide evidence of its compliance with this clause 24 promptly on request.

25 Nature of the Agreement

- 25.1 Each Party shall be entitled to perform any of the obligations undertaken by it and to exercise any rights granted to it under this Agreement through any other member of its Group, provided that any act or omission of that other member shall, for all the purposes of this Agreement, be deemed to be the act or omission of the Party in question.
- 25.2 Subject to clause 25.1, this Agreement is personal to the Parties and neither Party may assign, mortgage, or charge (otherwise than by floating charge) any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the prior written consent of the other Party unless it is to another member of its Group.
- 25.3 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 25.4 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law. Nothing in this Agreement shall limit a Party's liability for fraud or fraudulent misrepresentation.
- 25.5 No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 25.6 If any provision of this Agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.
- 25.7 Each of the Parties shall, at the request and cost of the other Party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the Party so requiring may reasonably require for the purpose of giving to the Party so requiring the full benefit of this Agreement.
- 25.8 For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Agreement, this Agreement is not intended to and does not, give any person who is not a Party to it, any right to enforce any of its provisions.
- 25.9 Any act or omission of any subsidiary, employee, contractor, representative or agent of any Party involved in the performance of this Agreement shall be considered in relation to this Agreement as an act or omission of that Party.
- 25.10 This Agreement may be executed in a number of counterparts and shall come into force once each Party has executed such a counterpart in identical form and exchanged the same with the other Party;
- 25.11 Where required in the Service Schedule to provide a report or other written deliverables, bluesource shall supply one copy of the report to the Company and grants them a non-exclusive revocable licence (without the right to sub-licence) to use such materials for the Term. bluesource shall own all copyright, database and other Intellectual Property Rights in all such materials, subject to the rights granted to the Company under this clause 25.11.
- 25.12 The Parties agree that, save for Documents created exclusively for the Company pursuant to the Service Schedule (rights in which shall be owned by the Company), all other Intellectual Property Rights howsoever arising in all bluesource's documents, programs, materials and deliverables shall vest in and belong to bluesource and the Company shall at the request of bluesource take all such steps and execute all such assignments and other documents as bluesource may reasonably require to ensure that all such Intellectual Property Rights vest in and belong to bluesource.

26 Law and Jurisdiction

- 26.1 This Agreement shall be governed by, and construed in accordance with the laws of England and Wales.
- 26.2 Subject to the dispute resolution procedure set out in clause 10, any dispute between the Parties relating to this Agreement shall fall within the exclusive jurisdiction of the courts of England and Wales.