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11 May 2018

Dear Customer ("Company"),

### **Variation of Agreement**

1. We refer to the agreement/s between our Parties for the provision of information technology services under our Master Service Agreement and applicable service schedules and statements of works, etc. (the "Agreement").
2. As you may be aware, the incoming Regulation (EU) 2016/679 of the European Parliament, known as the General Data Protection Regulation (GDPR) will apply to all organisations that control or process personal data from 25 May 2018. As a result, we wish to amend the Agreement as set out in this letter and attached addendum (together the "Variation of Agreement"), with effect from 25 May 2018 (the "Variation Date") to ensure compliance with the GDPR.
3. Any expressions defined in the Agreement and used in the Variation of Agreement, have the meaning set out in the Agreement.
4. In consideration for the Company continuing to use the Services pursuant to the Agreement, the Parties agree the following amendments to the Agreement as set out in this Variation of Agreement, with effect from the Variation Date.
5. Except as set out in this Variation of Agreement, the Agreement shall continue in full force and effect.
6. This Variation of Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or relating to it or its subject matter or formation shall be governed by and interpreted in accordance with the laws of England and Wales.
7. The Parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) that arises out of, or relating to, this Variation of Agreement or its subject matter or formation.
8. Unless otherwise agreed in writing by the Parties and alternative GDPR data protection clauses agreed, please sign and return a copy of this letter to acknowledge your agreement to the Variation of the Agreement or alternatively email a signed copy through to [contracts@bluesource.co.uk](mailto:contracts@bluesource.co.uk). For the avoidance of doubt, your continued use of the Services pursuant to the Agreement will be deemed acceptance of this Variation of Agreement.

bluesource Confidential

Yours sincerely,



Nick Jagers, Head of Operations

**Acknowledgement**

We agree to the Variation of the Agreement with effect from the Variation Date on the terms set out above.

For and on behalf of bluesource Information Limited:



Nick Jagers  
Head of Operations  
8/5/2018

For and on behalf of Customer:

Signed: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

## Addendum (for the processing of personal information)

Due to the added requirements of the General Data Protection Regulation ("GDPR") and the processing of personally identifiable information which is effective from 25<sup>th</sup> May 2018, as a data processor for the Company, bluesource needs to vary the Agreement as follows:

### 1 Definitions

<b>"Data Breach"</b>	shall have the meaning given to 'personal data breach' under GDPR.
<b>"Data Controller"</b>	shall have the meanings as described to them in the Data Protection Laws.
<b>"Data Processor"</b>	shall have the meanings as described to them in the Data Protection Laws.
<b>"Data Subject"</b>	shall have the meanings as described to them in the Data Protection Laws.
<b>"Data Protection Laws"</b>	means: <ul style="list-style-type: none"><li>(a) the DPA;</li><li>(b) the GDPR;</li><li>(c) the Privacy and Electronic Communications Regulations 2003; and</li><li>(d) any legislation that in respect of the United Kingdom, replaces the GDPR as a consequence of the United Kingdom leaving the EU."</li></ul>
<b>"Designated Contact"</b>	an employee of the Company nominated as a contact for the provision of Service.
<b>"DPA"</b>	the Data Protection Act 1998 as with bluesource detailed at: <a href="https://www.legislation.gov.uk/ukpga/1998/29/contents">https://www.legislation.gov.uk/ukpga/1998/29/contents</a> .
<b>"GDPR"</b>	the General Data Protection Regulation ((EU) 2016/679).
<b>"Personal Data"</b>	Personally identifiable information ("PII") as defined by DPA and GDPR.
<b>"Privacy Shield"</b>	means the Privacy Shield scheme and principles operated by the US Department of Commerce, and approved by the European Commission, or any replacement scheme and principles approved by the European Commission for that purpose from time to time.
<b>"Special Categories of Data"</b>	shall have the meanings as described to them in the Data Protection Laws.
<b>"Support Data"</b>	means all data, including all text, sound, video, image files, or software, that are provided to bluesource by or on behalf of Company through an engagement to obtain technical support under this agreement or produced during the relationship between the Parties, such as and not limited to support tickets, contracts, purchase orders, invoices, and emails.

### 2 Data Processing

Where bluesource, pursuant to this Agreement, processes Personal Data on behalf of the Company, bluesource acknowledges that the Company is the Data Controller and the owner of such Personal Data, and that bluesource is the Data Processor.

### 3 Compliance with DPA and GDPR

Bluesource, as a Data Processor, warrants that it has complied and shall continue to comply with the requirements of the applicable "Data Protection Laws" (DPA and GDPR, as appropriate) and any other legislation, in any jurisdiction which is applicable to bluesource's use of Personal Data, as amended or superseded.

### 4 Grounds for Processing

4.1 As Data Controller, the Company shall:

- 4.1.1 Obtain the necessary consent of the data subject to the processing of their Personal Data (including special categories of data as defined by GDPR);
- 4.1.2 Confirm the grounds upon which the Personal Data is being processed;

- 4.1.3 Indemnify bluesource against all liabilities, costs, expenses, damages and losses (including reasonable professional costs and expenses) suffered or incurred by bluesource as a result of the Company' breach of its obligations under Data Protection Laws; and
  - 4.1.4 Ensure that any Personal Data provided by the Company, Company employees, Company contractors or Company representatives is current, accurate and valid. If the Company wish to update the Company's Personal Data, they may do so by contacting their bluesource account manager or by emailing [privacy@bluesource.co.uk](mailto:privacy@bluesource.co.uk).
- 4.2 bluesource provides various Information Technology services to its customers ranging from software and hardware procurement, consultancy, support services, managed services, through to cloud based hosting and software as a service ("SAS") solutions. It has entered into a contractual arrangement with the Company to provide specific services under the Agreement ("Services") and process relevant Company Personal Data for that purpose and to maintain the relationship between the Parties.

## **5 Data Subjects**

- 5.1 Data Subjects include the Company's employees, designated contacts, contractors or representatives, provided to bluesource during the Company's relationship with bluesource.

## **6 Categories of Personal Data**

- 6.1 Personal Data includes but not limited to:

- i. Names;
- ii. Job titles;
- iii. Departments;
- iv. Address;
- v. Email addresses;
- vi. Telephone numbers.

Certain Services, and access to our websites and portals, may also capture necessary login details, cookies and IP addresses for authentication, security and customisation purposes. Further details can be found in bluesource's privacy and cookie policies, which may be updated from time to time.

- 6.2 During the relationship with the Company, bluesource will not ask for and process Special Categories of Data, unless specifically required as part of a Service and instructed accordingly by the Company as Data Controller.
- 6.3 As Data Controller, the Company, is responsible for the categories of Personal Data contained within information, documents (including emails), passed to bluesource for processing under the Agreement and ensure they have the necessary consent from the Data Subject/s for the relevant processing.

## **7 Data Processing Obligations**

- 7.1 In respect of any Personal Data to be processed by bluesource pursuant to this Agreement for which the Company is Data Controller, bluesource shall:
  - 7.1.1 Process Personal Data in accordance with its privacy policy;
  - 7.1.2 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the severity of the risks to the rights and freedoms of natural persons, take and maintain appropriate technical and organisational measures (including, where applicable, complying with the Company's policies and procedures relating to data protection) in relation to the Personal Data to ensure a level of security appropriate to the level of risk (and in assessing risk shall take account, in particular, of the risks that are presented by processing in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to the personal data). Such measures shall include inter alia as appropriate:
    - a. Access control on a "who needs to know, minimum rights" basis for both electronic and paper based data,
    - b. Maintaining an information security management system to ISO27001,

- c. Minimising the processing of Personal Data,
- d. The pseudonymisation and encryption of Personal Data,
- e. Transparency with regards to the functions and processing of Personal Data,
- f. The ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services,
- g. The ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident, and
- h. A process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;"

7.1.3 Except where a subcontractor has been specified in a Service Schedule and agreed by the Company upon signing the Service Schedule, Bluesource shall not engage any sub-processor without the prior specific or general written authorisation of the Company (and in the case of general written authorisation; bluesource shall inform the Company of any intended changes concerning the addition or replacement of other processors and the Company shall have the right to object to such changes);

7.1.4 Ensure that each of its employees, agents, consultants, subcontractors and sub-processors (collectively "Workers") are made aware of bluesource's obligations as Data Processor, under this Addendum, and enter binding obligations with bluesource to maintain the levels of security and protection required under this Variation of Agreement.

bluesource shall ensure that suitable terms are incorporated into each agreement with any Worker to the effect that the Worker shall be obligated to act at all times in accordance with duties and obligations of bluesource under this Variation of Agreement.

bluesource shall at all times be and remain liable to the Company for any failure of any Worker to act in accordance with the duties and obligations of bluesource under this Variation of Agreement;

7.1.5 Process Personal Data only on behalf of the Company in accordance with the Company's instructions (as Data Controller), and to perform its obligations under this Agreement or other documented instructions and for no other purpose save to the limited extent required by law.

Personal Data will be processed by bluesource to maintain the relationship and to fulfil the respective commitments pursuant to bluesource services, including, but not limited to:

- i. providing access to services;
- ii. to effect any notices pursuant to Agreement; and
- iii. to send the Company information on relevant bluesource products, services, and events.

Contractual consent is therefore deemed to have been given to process such Personal Data for these purposes.

7.1.6 From time to time, may make the Company aware of other services and products that may benefit them, with the individual's prior, freely given, specific, informed and unambiguous consent for their Personal Data to be used for this marketing purpose, where this is not covered under contractual consent for lawful processing;

7.1.7 Ensure that all Workers authorised to access the Personal Data are subject to obligations of confidentiality and receive training to ensure compliance with this Agreement and the Data Protection Laws;

7.1.8 Make available to the Company all reasonable information necessary to demonstrate compliance with the obligations laid out in Article 28 of GDPR and this Addendum and allow for and contribute to audits, including inspections, conducted by the Company or another auditor mandated by the Company; provided that, in respect of this provision bluesource shall immediately inform the Company if, in its opinion, an instruction infringes Data Protection Laws, poses a security risk to it or its other customers, or invades the privacy of others;

7.1.9 Considering the nature of the processing, aid the Company, within such timescales as the Company may require from time to time, in connection with the fulfilment of the Company's obligation as Data Controller to respond to requests for the exercise of data subjects' rights pursuant to Chapter III of the GDPR to the extent applicable;

- 7.1.10 Provide the Company with assistance in ensuring compliance with articles 32 to 36 (inclusive) of the GDPR (concerning security of processing, data breach notification, communication of a personal data breach to the data subject, data protection impact assessments, and prior consultation with supervisory authorities) to the extent applicable to the Company, considering the nature of the processing and the information available to bluesource as the Data Processor;
- 7.1.11 Immediately notify the Company in writing about:
  - i. any Data Breach or any accidental loss, disclosure or unauthorised access of which the Data Processor becomes aware in respect of Personal Data that it processes on behalf of the Company;
  - ii. any request for disclosure of the Personal Data by a law enforcement authority (unless otherwise prohibited);
  - iii. any access request or complaint received directly from a data subject (without responding other than to acknowledge receipt).
- 7.1.12 Maintain a record of its processing activities in accordance with Article 30 of the GDPR;
- 7.1.13 Not share, publish, sell, trade, give away, or in any other way use, disseminate or disclose Company Personal Data, or transfer such Company Personal Data from one country or territory to another, without Company prior written or contractual consent;
- 7.1.14 At the choice of the Company, delete or return all Company Personal Data and other Company Data to the Company, other than Support Data reasonably required to be retained by bluesource (for operational, compliance and legal requirements), at the end of the relationship between the Parties or at the termination of a service, as applicable, and delete existing copies unless UK law/legislation or Data Protection Laws requires storage of the personal data, such as for accounting, tax and HMRC data, etc.;

It is bluesource's policy, as with industry best practice, not to delete information from backups to maintain integrity. Data on backups will be destroyed when the backup is out of retention and should a system have to be restored, bluesource will look back at deletion requests and where necessary, redo deletion requests received after the date of the backup used to restore; and

- 7.1.15 Indemnify the Company against all liabilities, claims, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company or for which it may become liable because of or in connection with any failure of bluesource and its Workers to comply with this Addendum.
- 7.2 bluesource shall, except where covered under the Agreement or required to provide without charge under Data Protection Laws, at the Company's expense and at a rate agreed between the Parties:
  - 7.2.1 Deal promptly and properly with all enquiries or requests from the Company relating to the Personal Data and the data processing activities, promptly provide to the Company in such form as the Company may request, a copy of any Personal Data requested by the Company; and
  - 7.2.2 Assist the Company (where requested by the Company) in connection with any regulatory or law enforcement authority audit, investigation or enforcement action in respect of the Personal Data.

## **8 International Data Transfers**

- 8.1 In respect of any Personal Data to be processed by bluesource pursuant to this Agreement, bluesource shall not transfer the Personal Data outside the European Economic Area ("EEA") or to an international organisation without:
  - 8.1.1 obtaining the written permission of the Data Controller;
  - 8.1.2 ensuring appropriate levels of protection, including any appropriate safeguards if required, are in place for the Personal Data in accordance with the Data Protection Laws;
  - 8.1.3 notifying the Data Controller of the protections and appropriate safeguards in paragraph 8.1.2 above, and as required reasonably evidence to Company such.
- 8.2 As a global organisation headquartered in the United Kingdom, Company information, including Personal Data, may be accessible by its employees in the United States, Australia and Bulgaria, depending on the Services taken out. The appropriate controls have been put in place, including access control, confidentiality and contractual obligations, and where applicable, modal clauses or US Privacy Shield for the protection of Personal Data outside of the EEA.

8.3 As Data Controller, the Company shall be responsible for any export licence that may be required for any data transfer they have instructed from one geographic location to another.

**All other terms in the Agreement shall remain in full and affect for the duration of any transactions under the Agreement.**