



Bluesource Backup Exec Procurement SERVICE SCHEDULE

1. Applicable Contract Documents

- 1.1 This Service Schedule forms part of the Agreement and unless otherwise agreed in writing, shall be read together with, and is subject to:
- a) the General Terms and Conditions currently available at <https://www.bluesource.co.uk/privacy-and-governance/>;
 - b) the applicable Work Order;
 - c) any applicable Service Specific Terms; and
 - d) where the Goods and/or Services include Backup Exec, Desktop & Laptop Option (DLO), System Recovery or related products, the applicable End User Agreement currently available at <https://www.cloud.com/content/dam/cloud/documents/legal/backup-exec-end-user-agreement.pdf> (or such replacement location as may be notified by the Manufacturer, licensor, distributor or service provider from time to time).

2. Service Overview

- 2.1 This Procurement Service enables the Customer to procure Backup Exec, Desktop & Laptop Option (DLO), System Recovery and associated software products, licences, subscriptions, renewals, support services, documentation and related goods and services through Bluesource as a reseller and procurement provider.
- 2.2 The Software Products are owned, licensed, developed, supported and/or distributed by third-party Manufacturers, licensors, distributors and service providers, and are supplied by Bluesource pursuant to applicable upstream licensing, distribution and support arrangements.
- 2.3 Accordingly, the availability, delivery, activation, renewal, support and use of the Software Products and related services are subject to the applicable End User Agreement, Service Specific Terms, Documentation, product usage rights, support terms and other Upstream Requirements imposed by or on behalf of the relevant Manufacturer from time to time.
- 2.4 The purpose of this Service Schedule is to set out the terms upon which Bluesource procures and supplies such Software Products and related services to the Customer.
- 2.5 Bluesource will provide the goods and services specified in each Work Order (collectively, the "Services") in accordance with the Agreement, the applicable Work Order, the relevant End User Agreement, any applicable Service Specific Terms and any support, maintenance, subscription, licensing or service documentation issued or made available by or on behalf of the relevant Manufacturer.
- 2.6 For the purposes of this Service Schedule, the definitions set out in the General Terms and Conditions shall apply. In addition, the following definitions apply to this Service Schedule and should be read together with any applicable definitions contained in the relevant End User Agreement and Service Specific Terms:

"Approved Use"	means use of the Software Products solely for the Customer's or End User's own internal business purposes and in accordance with the applicable End User Agreement, Service Specific Terms and Documentation.
"Documentation"	means the applicable technical documentation, product documentation, support documentation, release notes, product usage rights, service descriptions, licence metrics, ordering documentation and other written materials made available by the Manufacturer in relation to the Software Products.
"End User"	means any individual, employee, contractor, affiliate, authorised user or other person who accesses or uses the Software Products under or through the Customer.
End User Agreement" ("EULA")	means the then-current end user licence agreement, end user agreement, subscription terms, cloud terms, product usage rights or other terms required by the applicable Manufacturer, licensor, distributor or service provider for access to, licensing of, support of, renewal of or use of the Software Products, including the Backup Exec End User Agreement available from time to time at the location specified in Clause 1.1 .

"Manufacturer"	means the manufacturer, developer, distributor, service provider or licensor of the goods and/or services being procured under the Work Order.
"Renewal Services"	means any renewal, extension, continuation, reinstatement or replacement of Software Products, subscriptions, support services, maintenance services or other entitlements relating to the Software Products.
"Service Specific Terms"	means any terms, conditions, requirements, restrictions, service descriptions, support terms, maintenance terms, licence metrics, product usage rights, documentation, warranties or other terms relating to the relevant Goods, Software Products or Services that are issued, imposed or made available by or on behalf of a Manufacturer and form part of the applicable Upstream Requirements.
"Service Start Date"	the date the Service commences, as specified in a Work Order, or if not detailed, the date the Work Order is placed.
"Software Products"	means Backup Exec, Desktop & Laptop Option (DLO), System Recovery and any related editions, modules, subscriptions, renewals, licences, support offerings, Updates, Documentation or other associated software products supplied under a Work Order.
"Upstream Requirements"	means any requirements, restrictions, obligations, policies, product usage rights, support terms, ordering terms, licence restrictions, End User Agreements, Documentation and other conditions imposed by or on behalf of a Manufacturer relating to the provision, licensing, activation, renewal, support or use of the relevant Goods, Software Products or Services.

3. Backup Exec Supply Chain and Applicable Terms

- 3.1 The Customer acknowledges that Bluesource does not develop, own or license Backup Exec and is acting solely as a reseller and procurement provider within an upstream distribution and licensing chain involving third-party licensors, manufacturers, distributors and service providers, including entities associated with Arctera, Cloud Software Group and Cognizant. Backup Exec products, licences, subscriptions, renewals, support services and related documentation are therefore supplied subject to the applicable End User Agreement, Service Specific Terms, product usage rights, support terms and other upstream requirements imposed by the relevant manufacturer, licensor, distributor or service provider from time to time. The Customer agrees that compliance with such requirements is a condition of the provision, activation, renewal and continued use of the relevant Goods and Services.

4. Support Services and Entitlements

- 4.1 Where a Work Order includes support services, maintenance services, support subscriptions, support entitlements or other support-related Services in respect of the Software Products, such Services shall be provided in accordance with the applicable Work Order, End User Agreement, Service Specific Terms, Documentation and applicable Upstream Requirements.
- 4.2 The scope, availability, service levels, support channels, maintenance rights, update rights, upgrade rights, response commitments and other support benefits applicable to the Software Products shall be limited to those expressly included within the purchased support offering and the applicable contractual documents governing such support services.
- 4.3 The Customer acknowledges that support services, maintenance services, updates, upgrades, technical assistance and other support-related benefits are available only where the applicable support offering, maintenance entitlement, subscription or support service has been purchased and remains active. The purchase of Software Products does not of itself entitle the Customer to receive support services beyond those expressly included within the applicable Work Order, support entitlement, End User Agreement, Service Specific Terms or Documentation.
- 4.4 The Customer acknowledges that Bluesource acts as a reseller and procurement provider in relation to support services supplied by or on behalf of a Manufacturer. Except where support services, maintenance services, managed services, consultancy services or other technical services are expressly provided by Bluesource under a separate agreement, service schedule, statement of work or Work Order, Bluesource does not undertake to provide manufacturer-level technical support, maintenance services, software development services, updates, upgrades or other manufacturer support obligations in relation to the Software Products. Any support, maintenance, response commitments or other technical services provided directly by Bluesource shall be limited to those expressly described in the applicable agreement, service schedule, statement of work or Work Order.

5. Support Entitlement Activation and Maintenance

- 5.1 The Customer acknowledges that support services, maintenance services, updates, upgrades and other support-related benefits may not become available until the applicable support entitlement, maintenance entitlement, subscription or support service has been successfully registered, activated or otherwise provisioned in accordance with the applicable Work Order, End User Agreement, Service Specific Terms, Documentation and Upstream Requirements. The Customer shall provide all information, authorisations, registrations, deployment information and other assistance reasonably required to enable the activation, validation and ongoing administration of such entitlements.
- 5.2 Where activation, registration, entitlement verification or maintenance validation is required by the applicable Manufacturer, licensor, distributor, supplier or service provider, Bluesource shall not be responsible for any delay, limitation, suspension or unavailability of support services resulting from the Customer's failure to complete or maintain such requirements.
- 5.3 The Customer acknowledges that entitlement to support services, maintenance services, updates, upgrades and other support-related benefits may be suspended, restricted, withdrawn or made unavailable where the relevant support entitlement, maintenance entitlement, subscription, licence or renewal right has expired, lapsed, been terminated or is otherwise not in good standing in accordance with the applicable contractual documents.
- 5.4 Eligibility for support services, maintenance services, updates, upgrades, subscriptions, renewals and other support-related benefits may be subject to the Customer maintaining the licences, subscriptions, support entitlements, maintenance services and other requirements specified in the applicable Work Order, End User Agreement, Service Specific Terms, Documentation and Upstream Requirements.
- 5.5 Bluesource shall not be responsible for any failure, delay, limitation, suspension or unavailability of support services arising from:
 - a) the Customer's failure to maintain the required licences, subscriptions, maintenance services or support entitlements;
 - b) the Customer's failure to comply with the applicable End User Agreement, Service Specific Terms, Documentation or Upstream Requirements;
 - c) restrictions, suspensions or withdrawal of support services by the applicable Manufacturer, licensor, distributor, supplier or service provider; or
 - d) the Customer's failure to provide information reasonably required for entitlement verification, support eligibility, maintenance administration or renewal administration.

6. Backup Exec End User Agreement and Flow Down Terms

- 6.1 Where the Goods and/or Services being procured under a Work Order include Backup Exec, Desktop & Laptop Option (DLO), System Recovery, related subscriptions, renewals, support offerings, Documentation, Updates, licences or associated services, the Customer acknowledges and agrees that such products and services are supplied subject to the applicable End User Agreement, Service Specific Terms, Documentation, product usage rights, support terms and other Upstream Requirements applicable to the relevant Software Products.
- 6.2 By placing a Work Order for any Software Products or related Services, the Customer acknowledges that it has reviewed, or has had a reasonable opportunity to review, the applicable End User Agreement, Service Specific Terms, Documentation and other applicable Upstream Requirements. The Customer agrees that such terms are incorporated into and form part of the contractual framework governing the relevant Software Products and Services. The placement of a Work Order shall constitute the Customer's acceptance of, and agreement to comply with, the applicable End User Agreement, Service Specific Terms, Documentation and Upstream Requirements. The Customer shall ensure that each End User accessing or using the Software Products is informed of, accepts and complies with such terms before the Software Products or Services are accessed, activated, renewed or used.
- 6.3 The Customer shall ensure that, before any Software Products, licences, subscriptions, renewals, support entitlements, licence keys, portal access, Documentation or related services are delivered, activated, renewed or otherwise made available to the Customer or any End User, the Customer and each relevant End User have accepted, or are otherwise validly bound by, the applicable End User Agreement and any applicable Service Specific Terms. Bluesource shall not be required to deliver, activate, renew or make available any affected Goods or Services unless this requirement has been satisfied.
- 6.4 The Customer shall not enter into, impose, accept or seek to rely upon any terms with any End User, affiliate, authorised user or other third party that conflict with, limit, modify, expand or override the Agreement, this Service Schedule, any Work Order, the applicable End User Agreement, any Service Specific Terms, Documentation or any other applicable Upstream Requirements. Any additional terms agreed between the Customer and any third party shall not bind Bluesource, the Manufacturer or any other relevant rights holder unless expressly agreed in writing by the relevant party.
- 6.5 The Customer shall ensure that the Software Products and any related licences, subscriptions, support, Documentation or services are acquired and used solely for Approved Use and in accordance with the Agreement, the applicable End User Agreement, Service Specific Terms, Documentation and any applicable Upstream Requirements.

- 6.6 The Customer shall not make, and shall ensure that its employees, contractors, agents, End Users and authorised users do not make, any representation, warranty, guarantee, indemnity, service level commitment or other promise relating to the Software Products that is inconsistent with or broader than the rights, obligations, restrictions or commitments contained in the Agreement, the applicable End User Agreement, Service Specific Terms or Documentation.
- 6.7 The Customer acknowledges that warranties, remedies, support obligations and usage rights relating to the Software Products are limited to those expressly set out in the Agreement, the applicable Work Order, the applicable End User Agreement, Service Specific Terms and Documentation. Bluesource acts as a reseller and procurement provider and, except to the extent expressly provided in the Agreement, does not provide any additional warranty, guarantee or commitment in relation to the performance, availability or operation of the Software Products.
- 6.8 The Customer shall maintain accurate records sufficient to demonstrate compliance with the applicable End User Agreement, Service Specific Terms and Upstream Requirements and shall provide such information to Bluesource upon reasonable request where required for ordering, delivery, activation, renewal, support, audit, compliance or licence verification purposes.
- 6.9 Where the Customer is subject to industry-specific, governmental, public-sector, procurement or regulatory requirements that may affect the provision, licensing, support or use of the Software Products, the Customer shall notify Bluesource before placing the relevant order. Bluesource shall not be bound by any such requirement unless expressly agreed in writing.
- 6.10 The Customer shall comply with all applicable laws and regulatory requirements relating to its procurement, deployment and use of the Software Products and shall provide all notices, consents and authorisations necessary for Bluesource, the Manufacturer and any relevant supplier or service provider to perform the Agreement, fulfil orders, provide support, administer renewals and comply with applicable legal and regulatory requirements.
- 6.11 If the Customer fails to satisfy any requirement of this section, Bluesource may delay, suspend or refuse the relevant order, delivery, activation, renewal, support entitlement or service availability to the extent reasonably necessary to comply with the Agreement, the applicable End User Agreement, Service Specific Terms, Documentation, Upstream Requirements or applicable law.

7. Term and Termination

7.1 Service Term

- 7.1.1 The Service shall commence on the Service Start Date and shall continue for the period specified in the applicable Work Order unless terminated earlier in accordance with the Agreement.
- 7.1.2 In the case of Goods and non-recurring Services, the Service shall continue until the relevant Goods and Services have been supplied in full and all payment obligations have been satisfied.
- 7.1.3 In the case of Software Products, subscriptions, maintenance services, support services and Renewal Services, the applicable Service Term shall be the term specified in the relevant Work Order and shall be subject to the Agreement, the applicable End User Agreement, Service Specific Terms, Documentation and any applicable Upstream Requirements.
- 7.1.4 The availability of Software Products, subscriptions, maintenance services, support services and Renewal Services may be subject to compliance with applicable licensing, entitlement, maintenance, deployment reporting, usage reporting and other requirements imposed under the applicable End User Agreement, Service Specific Terms, Documentation or Upstream Requirements.

7.2 Renewals and Non-Renewals

- 7.2.1 Unless otherwise specified in the applicable Work Order, recurring subscriptions, maintenance services, support services and other Renewal Services shall renew for successive renewal terms in accordance with the Agreement.
- 7.2.2 Bluesource will use reasonable endeavours to provide written notice of a pending renewal not less than ninety (90) days before the expiry of the then-current Service Term (the "Renewal Notice").
- 7.2.3 Unless either party provides written notice of non-renewal or termination in accordance with Clause 9 of the General Terms and Conditions and any notice period specified in the applicable Work Order, the Customer shall be deemed to have accepted the renewal of the affected Services on the pricing, quantities, licence metrics, support levels and minimum commitments applicable to the renewal term.
- 7.2.4 Nothing in this clause shall oblige Bluesource to renew any Software Product, subscription, maintenance service or support service where renewal is unavailable, restricted, suspended or refused by the applicable Manufacturer or where the Customer has not complied with applicable licensing, deployment, maintenance, reporting or renewal requirements.
- 7.2.5 Bluesource may elect not to renew a Service by providing not less than thirty (30) days' written notice before the end of the then-current Service Term.

7.3 Effect of Termination

7.3.1 Return of Physical Goods

Where any physical Software Products, physical media, hardware appliances, loan equipment or other tangible Goods supplied under a Work Order remain the property of Bluesource, the applicable Manufacturer, licensor, distributor or supplier, and the Customer is required under the Agreement, the applicable Work Order, the End User Agreement, Service Specific Terms, Documentation or other Upstream Requirements to return such Goods, the Customer shall promptly return them in accordance with the applicable requirements and at its own cost unless otherwise agreed in writing.

If the Customer fails to return such Goods within the required period following a written request from Bluesource, Bluesource may require the Customer to deliver up the relevant Goods immediately and the Customer shall cooperate fully in facilitating their recovery. If the Customer fails to do so, the Customer shall permit, or procure permission for, Bluesource or its authorised representatives to enter the premises where the Goods are located during normal business hours and upon reasonable notice for the purpose of recovering the relevant Goods.

The Customer shall remain responsible for all loss of or damage to such Goods until they have been returned to Bluesource or the relevant third party in accordance with the applicable requirements.

7.3.2 In accordance with Clause 11.1 of the General Terms and Conditions, upon termination or expiry of the Agreement or any applicable Service, all Fees, Renewal Term Fees and other amounts accrued or payable under the Agreement shall immediately become due and payable by the Customer.

7.3.3 Termination or expiry shall not affect any rights, remedies, obligations or liabilities accrued before the effective date of termination, including any payment obligations already incurred.

7.3.4 Where the Agreement, Work Order, End User Agreement, Service Specific Terms, Documentation or applicable Upstream Requirements require access to, use of, support for or licensing of any Software Products to cease upon termination or expiry, the Customer shall promptly comply with such requirements and shall ensure that all End Users do likewise.

7.4 Upstream Services and Third-Party Commitments

7.4.1 Where Bluesource has entered into arrangements with a Manufacturer, supplier, distributor, licensor or service provider in order to procure or supply the relevant Goods or Services, and such arrangements impose minimum terms, non-cancellable commitments, renewal obligations or payment obligations, the Customer acknowledges that those commitments may continue notwithstanding the termination of the affected Service by the Customer.

7.4.2 Accordingly, where Clause 11.1.3 of the General Terms and Conditions applies, Bluesource shall be entitled to recover any charges, commitments, liabilities, costs or fees incurred as a result of the Customer's termination, non-renewal or cancellation of the affected Goods or Services.

7.5 Suspension

7.5.1 Without prejudice to any other rights or remedies available to Bluesource, Bluesource may suspend, delay, restrict or refuse the provision, delivery, activation, renewal or support of any Software Products or Services where reasonably necessary to:

- a) comply with the Agreement, applicable Work Order, End User Agreement, Service Specific Terms, Documentation or Upstream Requirements;
- b) address non-payment by the Customer;
- c) respond to a suspension, restriction or withdrawal imposed by the applicable Manufacturer, licensor, distributor or service provider; or
- d) comply with applicable law or regulatory requirements.

Such suspension shall not relieve the Customer of any obligation to pay Fees properly due under the Agreement.

8. Delivery of Goods

8.1 Bluesource shall use reasonable endeavours to provide the Goods and Services specified in the applicable Work Order. Delivery may be made electronically, including by the provision of licence keys, activation rights, subscription entitlements, download credentials, account credentials, portal access, support entitlements, Documentation or other electronic means, or by physical delivery where applicable.

8.2 Any delivery dates, activation dates, implementation dates, renewal dates or other timescales communicated by Bluesource are estimates only and shall not be of the essence. Bluesource shall not be liable for any delay in the delivery, activation, renewal or provision of any Goods or Services arising from the acts or omissions of the Customer, any Manufacturer, licensor, distributor, supplier or service provider, or from any circumstance beyond Bluesource's reasonable control.

8.3 The Customer acknowledges that the delivery, activation, renewal, support and continued use of Software Products may be dependent upon compliance with the Agreement, the applicable Work Order, the End User Agreement, Service Specific Terms, Documentation and applicable Upstream Requirements. Bluesource shall not be responsible for any delay or inability to provide the relevant Goods or Services where such requirements have not been satisfied.

- 8.4 The Customer shall promptly review any licence keys, subscriptions, support entitlements, activation details, Documentation or other deliverables supplied by Bluesource and shall notify Bluesource without undue delay if it becomes aware of any material discrepancy in the quantity or type of Goods or Services supplied.
- 8.5 Where the Customer fails to provide information, approvals, acceptance of applicable contractual documents, licensing information, deployment information or other assistance reasonably required for the ordering, delivery, activation, support or renewal of any Goods or Services, Bluesource may delay or suspend performance until such information or assistance has been provided.
- 8.6 Bluesource shall not be obliged to deliver, activate, renew, support or continue to provide any Software Product, subscription, licence or related Service where the applicable Manufacturer, licensor, distributor, supplier or service provider has restricted, suspended, withdrawn or refused the relevant entitlement, licence, subscription, support service or renewal right, or where the Customer is not compliant with the applicable End User Agreement, Service Specific Terms, Documentation or Upstream Requirements.

9. Risk and Title

- 9.1 The Customer acknowledges that the Software Products are licensed and not sold. Except to the extent expressly provided in the applicable End User Agreement, Service Specific Terms, Documentation or applicable law, no ownership rights in any Software Product, subscription, licence, renewal, Update, support entitlement, Documentation or related intellectual property are transferred to the Customer.
- 9.2 All intellectual property rights, ownership rights and proprietary interests in the Software Products remain vested in the applicable Manufacturer, licensor or other rights holder. The Customer acquires only those rights to access, use and receive support for the Software Products that are expressly granted under the Agreement, the applicable Work Order, the End User Agreement, Service Specific Terms, Documentation and any applicable Upstream Requirements.
- 9.3 Any licence keys, activation rights, subscription entitlements, support entitlements, access credentials, portal access rights, Documentation or other deliverables supplied in connection with the Software Products are provided solely for use in accordance with the Agreement, the applicable Work Order, the End User Agreement, Service Specific Terms, Documentation and applicable Upstream Requirements and may be suspended, restricted, withdrawn or terminated where required under those documents.
- 9.4 Where any Software Product, subscription, support entitlement, renewal right or other benefit is suspended, withdrawn, restricted or terminated by the applicable Manufacturer, licensor, distributor, supplier or service provider pursuant to the End User Agreement, Service Specific Terms, Documentation or other Upstream Requirements, Bluesource shall not be responsible for any resulting inability of the Customer to access, activate, renew, support or use the affected Software Products except to the extent expressly provided in the Agreement.
- 9.5 To the extent that any physical media, documentation or tangible Goods are supplied under a Work Order, risk in those tangible Goods shall pass to the Customer upon delivery and title shall pass only when Bluesource has received payment in full for those Goods and any related charges due under the Agreement.

10. Payments

In addition to clauses 8 (Payments and Records) of the General Terms and Conditions:

10.1 General

- 10.1.1 In addition to Clause 8 (Payments and Records) of the General Terms and Conditions, the Customer shall pay all Fees specified in the applicable Work Order.
- 10.1.2 Bluesource shall be entitled to invoice for Software Products, subscriptions, support services, maintenance services, renewal services and related Goods or Services from the date that such products, entitlements, subscriptions, licences, support rights, renewal rights or services are made available to the Customer, whether by electronic delivery, activation, portal access, licence entitlement, renewal confirmation or other means.
- 10.1.3 Where Bluesource is unable to provide, activate, renew or make available any Software Product or Service due to the Customer's failure to provide required information, approvals, deployment information, licence information, acceptance of applicable contractual documents or other assistance reasonably required by Bluesource, the Manufacturer or any supplier, Bluesource may invoice the applicable Fees as if the relevant Goods or Services had been made available.

10.2 Licence Quantities, Renewals and Compliance Adjustments

- 10.2.1 The Customer acknowledges that Fees may be based upon licence quantities, subscription quantities, support levels, maintenance coverage, deployment information, entitlement levels, product editions or other metrics specified in the applicable Work Order, End User Agreement, Service Specific Terms, Documentation or Upstream Requirements.
- 10.2.2 Where licence compliance reviews, deployment reporting, renewal assessments, entitlement reviews or other processes carried out pursuant to the End User Agreement, Service Specific Terms, Documentation or Upstream Requirements identify additional quantities, licences, subscriptions, support entitlements, maintenance coverage or other fees as being payable, Bluesource may invoice the Customer for such additional amounts and the Customer shall pay them in accordance with the Agreement.

10.3 **Renewal Fees**

- 10.3.1 Renewal Fees shall be payable in accordance with the applicable Work Order, renewal quotation or renewal notice issued by Bluesource.
- 10.3.2 The Customer acknowledges that renewal pricing, licence quantities, support levels, maintenance terms and subscription terms may differ from those applicable during the preceding Service Term and may be modified by the applicable Manufacturer, licensor, distributor, supplier or service provider.

10.4 **Non-Cancellable Commitments**

- 10.4.1 Where Bluesource has committed to a Manufacturer, supplier, licensor, distributor or service provider on a non-cancellable, non-refundable or minimum-term basis in connection with any Software Product, subscription, maintenance service, support service or Renewal Service, the corresponding Customer commitment shall be non-cancellable except as expressly agreed otherwise in writing.
- 10.4.2 Termination, cancellation, non-renewal, suspension of use or reduction of actual usage shall not relieve the Customer of any obligation to pay Fees which Bluesource remains liable to pay under any applicable upstream arrangement.

10.5 **Acceleration of Outstanding Charges**

- 10.5.1 Where:
 - a) the Customer terminates the Agreement or any applicable Service before the expiry of an agreed Service Term;
 - b) Bluesource terminates the Agreement in accordance with its terms;
 - c) there is a material adverse change in the Customer's creditworthiness; or
 - d) the Customer fails to pay any sum due under the Agreement,

Bluesource may withdraw any deferred payment, instalment, split-billing or arrears-billing arrangements and immediately invoice any Fees, Renewal Fees, commitments or other amounts which remain payable under the Agreement.

11. **Returns, Cancellations and Defective Goods**

- 11.1 Except where expressly agreed in writing by Bluesource or required by applicable law, Software Products, software licences, subscription entitlements, support services, maintenance services, renewals, activation rights, licence keys, portal access credentials and electronically delivered Goods or Services are non-cancellable, non-returnable and non-refundable once provision, activation, delivery or fulfilment has commenced.
- 11.2 Any right of cancellation, return, replacement, credit, refund or reinstatement shall be subject to the Agreement, the applicable Work Order, the End User Agreement, Service Specific Terms, Documentation, applicable Upstream Requirements and any policies or procedures imposed by the relevant Manufacturer, licensor, distributor, supplier or service provider.
- 11.3 Where physical Goods are supplied under a Work Order and returns are permitted by the applicable Manufacturer, supplier or service provider, Bluesource may, at its discretion, permit the return of such Goods subject to any applicable return conditions, return approval requirements, restocking charges, administration charges, return deadlines or other requirements imposed by the relevant supplier or Manufacturer.
- 11.4 Any refund, replacement, repair, credit or other remedy relating to defective Goods, Software Products or Services shall be subject to the applicable Manufacturer's warranty terms, support policies, Service Specific Terms, Documentation and Upstream Requirements. Bluesource shall have no obligation to provide any refund, replacement or repair beyond those rights expressly available under such arrangements.
- 11.5 The Customer shall comply with all procedures, reporting requirements, troubleshooting requirements, return authorisation procedures and warranty processes imposed by the applicable Manufacturer, supplier or service provider. Bluesource may require the Customer to work directly with the relevant Manufacturer's support organisation where required by the applicable warranty, support terms, Documentation or Upstream Requirements.
- 11.6 Where Bluesource approves the return of physical Goods, the Customer shall return such Goods in accordance with Bluesource's instructions and any applicable Manufacturer requirements. The Customer shall be responsible for ensuring that all returned Goods are appropriately packaged and accompanied by any accessories, media, Documentation or other items reasonably required by the relevant return process.
- 11.7 If testing, inspection or review establishes that the relevant Goods, Software Products or Services are not defective, are outside any applicable warranty or return period, or do not qualify for return, replacement, repair or credit under the applicable Manufacturer requirements, Bluesource may reject the claim and recover any reasonable costs incurred in connection with the investigation, testing, handling or return of the affected item.
- 11.8 Nothing in this clause shall oblige Bluesource to accept the return of any Software Product, licence, subscription, support service, maintenance service, renewal entitlement or other item where return, cancellation, refund or credit is prohibited or unavailable under the applicable End User Agreement, Service Specific Terms, Documentation or Upstream Requirements.

12. Data and usage Information

- 12.1 The Customer acknowledges that the Software Products, support services, renewal services and related offerings may generate or require the provision of licence, entitlement, deployment, configuration, telemetry, support, diagnostic or usage information in connection with the provision, activation, support, renewal, maintenance or compliance verification of the Software Products. The Customer authorises Bluesource, the applicable Manufacturer and relevant suppliers or service providers to process such information to the extent necessary to fulfil orders, administer licences, provide support, manage renewals, verify compliance, improve products and services, and perform their respective obligations under the Agreement, the applicable Work Order, the End User Agreement, Service Specific Terms and applicable Documentation.
- 12.2 The Customer is responsible for ensuring that it has all necessary rights, notices, authorisations and consents required for the provision of any information supplied to Bluesource, the Manufacturer or any relevant supplier or service provider in connection with the Software Products and Services.
- 12.3 Usage, entitlement, deployment and telemetry information generated through the use of the Software Products may be used by Bluesource, the Manufacturer and relevant suppliers or service providers for licensing, entitlement management, support, renewal administration, compliance verification and product improvement purposes in accordance with the applicable contractual documents and privacy requirements.

13. Customer's Obligations

In addition to its obligations under clause 4 of the General Terms and Conditions, the Customer shall:

- 13.1 **Product Suitability** - Determine whether the Goods, Software Products and Services meet the Customer's operational, technical, business, security, regulatory and compliance requirements and remain solely responsible for the selection, deployment and use of the Software Products.
- 13.2 **Security and Data Protection** - Determine whether the security, functionality, resilience, backup, recovery and data protection capabilities of the Software Products are suitable for the Customer's intended use and comply with the Customer's internal requirements and applicable legal or regulatory obligations.
- 13.3 **Compliance with Contractual Documents** - Comply with, and ensure that all End Users comply with, the Agreement, the applicable Work Order, the End User Agreement, Service Specific Terms, Documentation and all applicable Upstream Requirements at all times.
- 13.4 **Licence Compliance** - Ensure that the Software Products are installed, activated, accessed and used only within the scope of the licence quantities, subscription quantities, support entitlements, product editions, licence metrics and usage rights purchased under the applicable Work Order and permitted under the End User Agreement, Service Specific Terms and Documentation.
- 13.5 **Deployment, Entitlement and Renewal Information** - Maintain complete and accurate information regarding the deployment, installation, activation, licensing, usage and entitlement status of the Software Products and provide such information to Bluesource upon reasonable request where required for ordering, activation, support, renewals, entitlement verification, compliance reviews, licence management or audit purposes.
- 13.6 **Renewal and Support Eligibility** - Provide all information, confirmations, deployment data, entitlement information and other assistance reasonably required by Bluesource, the Manufacturer or any relevant supplier or service provider to administer subscriptions, maintenance services, support services, renewals and ongoing entitlement eligibility.
- 13.7 **End User Compliance** - Ensure that all End Users, authorised users, affiliates, contractors, agents and other persons who access or use the Software Products are informed of, and comply with, the applicable End User Agreement, Service Specific Terms, Documentation, product usage rights, restrictions and support requirements, and that no access, use, deployment, renewal or support request is made in breach of those terms.
- 13.8 **Protection of Access Credentials and Licence Assets** - Protect and maintain the confidentiality of all licence keys, activation codes, subscription credentials, support credentials, portal access credentials and other entitlement information associated with the Software Products and promptly notify Bluesource of any actual or suspected unauthorised access, misuse, disclosure or compromise.
- 13.9 **Compliance Reviews and Audits** - Reasonably cooperate with any entitlement verification process, compliance review, licence verification exercise or audit conducted in accordance with the End User Agreement, Service Specific Terms, Documentation or applicable Upstream Requirements.
- 13.10 **No Circumvention of Licensing Controls** - Not, and ensure that End Users do not, bypass, disable, interfere with, modify or otherwise circumvent any licensing controls, activation mechanisms, entitlement controls, access restrictions or technical protection measures relating to the Software Products.
- 13.11 **Customer Backups and Recovery** - Where the Customer has not purchased a backup, managed recovery or other data protection service from Bluesource, remain solely responsible for maintaining appropriate backup, disaster recovery, retention and restoration processes for the Customer's systems, applications and data. Bluesource shall have no responsibility for the adequacy or performance of such arrangements. This obligation applies notwithstanding the procurement of Backup Exec or related Software Products.

- 13.12 **Legal and Regulatory Compliance** - Comply with all applicable laws, regulations and industry requirements relating to the procurement, deployment, use and operation of the Software Products, including laws relating to data protection, privacy, cyber security, export controls and sanctions.
- 13.13 **Customer Information** - Ensure that all information provided to Bluesource in connection with any quotation, Work Order, renewal, support request or other aspect of the Agreement is accurate, complete and up to date and that Bluesource's use of such information will not infringe the rights of any third party.
- 13.14 **Notification of Licence or Compliance Issues** - Promptly notify Bluesource of any actual or suspected licence breach, entitlement issue, unauthorised deployment, non-compliant use, security incident or other matter that may affect the Customer's right to access, use, support, renew or receive the Software Products.

14. Intellectual Property Rights and Software Licences

- 14.1 **Software Products** - The Customer acknowledges that the Software Products are licensed and not sold. Except to the extent expressly provided in the applicable End User Agreement, Service Specific Terms, Documentation or applicable law, no ownership rights in any Software Product, subscription, licence, renewal, Update, support entitlement, Documentation or related intellectual property are transferred to the Customer. All Intellectual Property Rights in and relating to the Software Products remain vested in the applicable Manufacturer, licensor or other rights holder. The Customer acquires only those rights to access, use and receive support for the Software Products that are expressly granted under the Agreement, the applicable Work Order, the End User Agreement, Service Specific Terms, Documentation and applicable Upstream Requirements.
- 14.2 **Compliance with Software Licence Terms** - The Customer shall use the Software Products strictly in accordance with the Agreement, the applicable Work Order, the End User Agreement, Service Specific Terms, Documentation and applicable Upstream Requirements and shall not acquire any rights in the Software Products other than those expressly granted under those documents. The Customer shall ensure that all End Users comply with such requirements. d]
- 14.3 **Ownership of Pre-Existing Intellectual Property** - Each Party shall retain ownership of all Intellectual Property Rights owned, controlled or developed by it prior to the commencement of the Agreement or developed independently of the Agreement. Nothing in the Agreement shall operate to assign, transfer or grant ownership of any Intellectual Property Rights from one Party to the other except to the extent expressly stated in the Agreement.
- 14.4 **Limited Licence Between the Parties** - Each Party grants to the other a non-exclusive, non-transferable, revocable and limited licence to use its Intellectual Property Rights solely to the extent reasonably necessary for the performance of the Agreement and for no other purpose.
- 14.5 **Bluesource Intellectual Property** - Bluesource and its licensors shall retain ownership of all Intellectual Property Rights in:
 - a) any quotations, proposals, statements of work, designs, methodologies, tools, templates, processes, documentation, reports or other materials created or supplied by Bluesource;
 - b) any modifications, enhancements, improvements or derivative works relating to the foregoing; and
 - c) any skills, knowledge, experience, techniques, concepts, know-how or methodologies acquired, developed or used by Bluesource in connection with the provision of the Goods or Services,provided that nothing in this clause shall grant Bluesource ownership of the Customer's Intellectual Property Rights or Customer data.
- 14.6 **Manufacturer and Third-Party Intellectual Property** - The Customer acknowledges that the Software Products, Documentation and associated materials may contain Intellectual Property Rights owned by Manufacturers, licensors and other third parties. The Customer shall not remove, obscure or alter any copyright notice, trademark, proprietary notice or other rights notice appearing in or on any Software Product, Documentation or related material.
- 14.7 **Restrictions on Copying and Reproduction** - Except to the extent expressly permitted under the applicable End User Agreement, Service Specific Terms, Documentation or applicable law, the Customer shall not copy, reproduce, publish, distribute, modify, create derivative works from, reverse engineer, decompile, disassemble or otherwise exploit any Software Product, Documentation or related material without the prior written consent of the applicable rights holder.
- 14.8 **No Implied Rights** - Except for the limited rights expressly granted under the Agreement, no licence, assignment, transfer or other right in respect of any Intellectual Property Rights shall arise by implication, estoppel or otherwise.

15. Warranties

- 15.1 To the maximum extent permitted by applicable law, all conditions, warranties, representations and other terms which might otherwise be implied by statute, common law or otherwise in relation to the Goods, Software Products or Services are excluded except to the extent that such exclusion is prohibited by law.
- 15.2 Bluesource warrants that it has the right to procure and supply the Goods, Software Products and Services in accordance with the Agreement.

- 15.3 Bluesource further warrants that any Services performed directly by Bluesource under this Service Schedule shall be performed with reasonable skill and care and in accordance with generally accepted industry standards.
- 15.4 The Customer acknowledges that the Software Products are developed, owned, licensed, maintained and supported by the applicable Manufacturer, licensor, distributor or service provider and that Bluesource does not develop, own or control the Software Products. Except as expressly stated in the Agreement, Bluesource does not warrant that any Software Product will be uninterrupted, error free, secure, fit for any particular purpose or free from defects.
- 15.5 The Customer is solely responsible for determining whether the Software Products, Services and related Goods are suitable for its intended use, operational requirements, security requirements, resilience requirements, backup requirements, recovery requirements and legal or regulatory obligations.
- 15.6 Any warranties, remedies, service commitments, support obligations or performance commitments relating to the Software Products shall be limited to those expressly granted by the applicable Manufacturer, licensor, distributor or service provider under the applicable End User Agreement, Service Specific Terms, Documentation or other Upstream Requirements. Where such rights are made available to the Customer, Bluesource shall use reasonable endeavours to pass through the benefit of those rights to the Customer but does not provide any warranty beyond those expressly set out in the Agreement.
- 15.7 Without limitation to the foregoing, Bluesource does not warrant or guarantee:
- a) that the Software Products will operate without interruption or error;
 - b) that every defect or issue will be corrected;
 - c) that use of the Software Products will achieve any particular business, operational, compliance, backup, recovery, resilience or security outcome;
 - d) that any backup, restore, recovery, replication or data protection operation will be successful in every circumstance; or
 - e) that the Software Products will be compatible with any particular hardware, software, operating environment or third-party product except to the extent expressly stated in the applicable Documentation.
- 15.8 Where physical Goods are supplied under a Work Order, Bluesource's obligations in relation to defective Goods shall be limited to the rights, remedies and warranty procedures made available by the applicable Manufacturer, supplier or service provider, unless otherwise expressly agreed in writing.
- 15.9 Nothing in this clause excludes or limits any warranty or remedy that cannot lawfully be excluded or limited under applicable law.

16. Data Processing

- 16.1 Personal Data provided by the Customer shall, unless otherwise agreed in writing between the Parties, be processed in accordance with Bluesource's Data Processing Policy (available at <https://www.Bluesource.co.uk/privacy-and-governance/>), the Agreement, this Service Schedule and any applicable Service Specific Terms, End User Agreement or other contractual documents applicable to the relevant Goods, Software Products or Services.
- 16.2 To prepare quotations, process Work Orders, administer licences, subscriptions, support services, renewals and other Software Products, and perform its obligations under the Agreement, Bluesource may disclose relevant Customer Personal Data to the applicable Manufacturer, licensor, distributor, supplier or service provider and their authorised affiliates, contractors and service providers. Such Personal Data may include the names, business contact details and account information of Customer personnel responsible for ordering, administering, supporting or using the relevant Goods or Services.
- 16.3 Where Software Products, support services, maintenance services, subscriptions, renewals or other Services require registration, activation, entitlement administration, support administration, licence compliance verification, deployment reporting or account management activities, the Customer authorises Bluesource and the applicable Manufacturer or supplier to process the information reasonably required for those purposes.
- 16.4 The Customer shall ensure that it has obtained all notices, permissions, authorisations and other rights required to provide Personal Data and other information to Bluesource, the applicable Manufacturer, licensor, distributor, supplier or service provider in connection with the Agreement and the Software Products.
- 16.5 The Customer acknowledges that the Software Products, support services and related offerings may generate or require the provision of licence, entitlement, deployment, configuration, telemetry, support, diagnostic, usage or compliance information. Bluesource, the applicable Manufacturer and relevant suppliers or service providers may process such information to the extent reasonably necessary to:
- a) fulfil orders;
 - b) administer licences, subscriptions and support entitlements;
 - c) provide support and maintenance services;
 - d) administer renewals;
 - e) verify licensing, entitlements and compliance;
 - f) operate, improve and support the relevant Goods and Services; and
 - g) comply with applicable contractual, legal and regulatory requirements.

- 16.6 Except to the extent expressly stated in the Agreement, Bluesource does not determine the purposes for which the applicable Manufacturer, licensor, distributor, supplier or service provider processes information supplied in connection with the Software Products and shall not be responsible for the independent processing activities of such parties.
- 16.7 Each Party shall comply with applicable Data Protection Laws in connection with its performance of the Agreement.
- 16.8 **International Transfers**
- 16.8.1 The Customer acknowledges that, in connection with the quotation, ordering, registration, activation, licensing, support, maintenance, renewal, entitlement administration, compliance verification and operation of the Software Products, Personal Data may be transferred to, accessed by or processed by Manufacturers, licensors, distributors, suppliers, service providers or other authorised recipients located in the United Kingdom, the European Economic Area or other jurisdictions.
- 16.8.2 Where Personal Data is transferred outside the United Kingdom or European Economic Area, the relevant Party shall ensure that such transfer is carried out in accordance with applicable Data Protection Laws and that appropriate transfer safeguards are implemented where required, including adequacy regulations, standard contractual clauses, international data transfer agreements or other lawful transfer mechanisms recognised under applicable Data Protection Laws.
- 16.8.3 The Customer acknowledges that Bluesource does not control the independent processing activities of Manufacturers, licensors, distributors, suppliers or service providers acting in their own capacity in connection with the Software Products. Where such third parties receive Personal Data in connection with the provision, licensing, activation, support, maintenance or renewal of the Software Products, Bluesource shall use reasonable endeavours to ensure that disclosures are limited to the information reasonably required for those purposes.
- 16.9 **Compliance Records and Audit Cooperation**
- 16.9.1 Each Party shall maintain records and information reasonably required to demonstrate compliance with applicable Data Protection Laws in relation to its processing activities under the Agreement. Each Party shall cooperate with the other, acting reasonably, in responding to regulatory enquiries, data subject requests, audits or investigations relating to Personal Data processed in connection with the Software Products and Services.
- 16.9.2 Where the Customer reasonably requires information relating to Personal Data processed by Bluesource in connection with the performance of the Agreement, Bluesource shall, upon reasonable written request and subject to applicable confidentiality, security, legal and contractual obligations, make available information reasonably necessary to demonstrate its compliance with applicable Data Protection Laws.
- 16.9.3 The Customer acknowledges that Manufacturers, licensors, distributors, suppliers and service providers involved in the provision, licensing, activation, support, maintenance or renewal of the Software Products may process Personal Data independently of Bluesource. Bluesource shall not be required to disclose information that it does not possess or control, or information that it is prohibited from disclosing under applicable law, confidentiality obligations or contractual restrictions.
- 16.9.4 Any request for information, audit cooperation or compliance documentation under this clause shall be limited to information relevant to the Software Products and Services supplied under the Agreement and shall be exercised in a manner that does not unreasonably interfere with Bluesource's business operations or compromise the confidentiality, security or rights of Bluesource, its suppliers or other customers.
- 16.10 **Transparency of Data Recipients** - The Customer acknowledges that, in connection with the quotation, ordering, registration, activation, licensing, support, maintenance, renewal, entitlement administration and compliance verification of the Software Products, Bluesource may disclose Personal Data to the applicable Manufacturer, licensor, distributor, supplier or service provider and their authorised affiliates, contractors and service providers involved in the provision of the relevant Goods or Services. Upon reasonable written request and subject to applicable confidentiality, security and contractual obligations, Bluesource shall provide information regarding the categories of recipients to whom Customer Personal Data may be disclosed in connection with the performance of the Agreement.
- 16.11 **Role of Data Recipients** - The Customer acknowledges that recipients of Personal Data referred to in this Service Schedule may process such Personal Data as independent controllers, processors or sub-processors, depending on the nature of the relevant activity and the applicable contractual arrangements. Bluesource does not represent that any Manufacturer, licensor, distributor, supplier or service provider acts solely as a processor on behalf of Bluesource and such parties may process Personal Data for their own lawful purposes in connection with the licensing, activation, support, maintenance, renewal, entitlement administration, compliance verification and operation of the Software Products.