

TERMS AND CONDITIONS

1.1 In these Terms and Conditions unless the context otherwise requires, the following words have the following meanings:

“Agreement” means the written agreement between the Client and Blue Fountain and signed by the Client for supply of the Services formed by these Conditions including but not limited to any order form, service agreement, software licence, source code licence, maintenance agreement, development agreement or other;

“Blue Fountain” means Blue Fountain Systems Ltd whose head office is at PO Box 1060, Liverpool L69 2WP.

“Client” means the party contracting for the Services as set out in the Agreement;

“Conditions” means these terms and conditions;

“Content” means any information of the Client required for the Services which is specified in the Agreement;

“Content Delivery Schedule” means the schedule prepared by Blue Fountain and provided to the Client detailing the dates by which the Content is to be delivered to Blue Fountain;

“Delivery” means when a server is turned as part of the Services or when the Works arrive at the Client’s premises whichever is the earlier;

“Delivery Date” means the Milestone set out in the Agreement for delivery of the specified Services;

“Fee(s)” means the Fee(s) payable to Blue Fountain for the Services as set out in any Agreement;

“Intellectual Property “Rights” means all vested, contingent and future intellectual property rights including but not limited to patents, copyrights, registered and unregistered trademarks, service marks, domain names, database rights, registered designs, design rights, know-how, inventions, get-up, confidential information, trade and business names, and any other similar protected rights in any country subsisting now or in the future together with, in relation to any of the foregoing rights: (i) the right to sue for past infringements; (ii) any applications for registration; and (iii) any licenses;

“Milestones” means dates that may be identified in any Agreement by when events shall occur;

“Payment Schedule” means the Schedule detailing the dates, amount and manner of payment to Blue Fountain for the provision of the Services as set out in any Agreement.

“Services” means the services including the provision of software and code licences, maintenance, training, hosting, server provision, installation or support that Blue Fountain agrees to provide to the Client in accordance with clause 3 of these Conditions;

“Services Schedule” means any schedule detailing the Works and Services and their associated costs;

“Specification” means the specification for the Works and Services as set out in the Agreements;

“Works” means any and all works and materials provided or developed by Blue Fountain in the provision of the Services including without limitation, any software, hardware and any ancillary materials.

1.2 In these Conditions, unless the context otherwise requires: (a) words in the singular include the plural and vice versa and words in one gender include any other gender; and (b) a reference to: (i) “Blue Fountain” includes any sub-contractor or agent of Blue Fountain Ltd for the purposes of carrying out its obligations under the Agreement (ii) any party includes its successors in title and permitted assigns.

1.3 In the event of any conflict or inconsistency between these Conditions and (a) any Project Plan; (b) the Payment Schedule; or (c) any Specification; or (d) Services Schedule, or (e) the Schedule; (f) or

any Agreement between the Client and Blue Fountain, then these Conditions shall prevail.

1.4 In these Conditions or any Agreement unless the context otherwise requires:

words importing any gender include every gender;

words importing the singular number include the plural number and vice versa;

words importing persons include firms, companies and corporations and vice versa;

references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;

reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;

the headings to the clauses, schedules and paragraphs of this Agreement will not affect the interpretation;

any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

any party who agrees to do something will be deemed to fulfill that obligation if that party procures that it is done.

2. Agreements

2.1 These Conditions apply to all Agreements between Blue Fountain and the Client.

2.2 Any Agreement will be on these Conditions to the exclusion of all other representations, warranties, terms and conditions whether rendered prior to or subsequent to these Conditions (including without limitation any terms or conditions which the Client purports to apply).

2.3 No action by Blue Fountain shall purport to its acceptance of any terms or conditions of any Client or third party and Blue Fountain's Conditions shall always be subsequent to any other party's terms and conditions unless otherwise stated in writing by an authorised officer of Blue Fountain.

2.4 Any order placed by the Client shall be deemed an offer that shall be capable of acceptance by Blue Fountain and shall be deemed accepted at the initial point of delivery of the services by Blue Fountain.

3. The Services of Blue Fountain

3.1 Blue Fountain shall supply the Client with the Services exercising reasonable care and skill and comply with all necessary laws and regulation and shall indemnify the Client against loss up to a maximum of £1,000,000.00 .

3.2 The parties shall meet from time to time in order to review progress on the provision of the Services and to agree any minor variations to any Specification and Services Schedule.

3.3 The parties may enter into a new Agreement in respect of any requirement by the Client for variations which are substantial.

3.4 Subject to the Client's compliance with clause 4, Blue Fountain shall provide the Services in accordance with the applicable Agreement, Specification and Services Schedule.

3.5 Blue Fountain is under no obligation to handle technical enquiries from third parties following completion of the Services. In the event of the Client requiring maintenance or support services, these services will be for the avoidance of doubt covered by these Conditions.

4. Orders

4.1 Any tariffs, proposals, offers, forms or similar documents from Blue Fountain shall not be treated as offers capable of acceptance by the Client and shall be treated as invitations to treat only providing information and do not place Blue Fountain under any obligations to enter into any Agreement.

4.2 All orders for Services by the Client shall be deemed offers to purchase the Services in accordance with these Conditions and capable of acceptance by Blue Fountain who shall not be obliged to make such acceptance.

4.3 Blue Fountain vendors and representatives shall not be authorised to accept orders or offers nor are they granted the right to enter into agreements on behalf of Blue Fountain.

4.4 Photographs, drawings, descriptions, illustrations or similar are provided only as a guide and no Services shall be sold by sample.

5. Assistance from the Client

5.1 The Client shall at all times provide Blue Fountain with such assistance, co-operation, information, entrance onto premises permission, licences and source materials as may reasonably be necessary to enable Blue Fountain to fulfill its obligations under the Agreement.

5.2 The Client shall ensure at its own cost that it possesses and shall make available to Blue Fountain all necessary compatible material and software in good working order to enable Blue Fountain to perform the Services.

5.3 The Client shall comply with all necessary laws and regulations and shall fully indemnify Blue Fountain against all losses incurred by Blue Fountain caused by the Client's failure to comply. It shall be the Client's sole responsibility to ensure its compliance in accordance with this clause 5.3.

5.4 The Client shall use best endeavours to ensure that its Content is secure.

5.5 The Client shall use best endeavours to ensure that any property of Blue Fountain provided by Blue Fountain under the Agreement that is under the control of the Client remains in good condition.

5.6 Following termination of the Conditions or the relevant Agreement, the Client shall return any property as referred to in clause 5.5 to Blue Fountain in the same condition as when provided by Blue Fountain subject to normal wear and tear within 30 days from the termination..

5.7 The Client shall be charged for any delay in returning the property to Blue Fountain at a rate equal to a [£100 per day]

6. Term (How about the term of Conditions)

6.1 The term of any Agreement shall be for a minimum period of 12 months unless otherwise agreed in writing and signed by an authorised officer of each of the parties

6.2 The term of the Agreement shall commence on the date as set out in the applicable Agreement unless otherwise agreed in writing and signed by an authorised officer of each of parties.

6.3 The term of the Agreement shall automatically continue after the period set out in clause 6.1 for a minimum period of 12 months.

6.4 Subject to clause [15] notice of termination of the term shall be provided in writing no later than three months prior to the end of the respective periods set out in clauses 6.1 or

7. Delivery

7.1 Blue Fountain shall deliver the Services in accordance with the Milestones but Blue Fountain shall use such Milestones as a guide and shall not be obliged to deliver in accordance with the Milestones.

7.2 If Delivery has not occurred at the end of 31 days following the Delivery Date the Client shall request in writing that Blue Fountain shall deliver the Services within ten working days of receipt by Blue Fountain of that notice.

7.3 The Client shall be entitled to terminate the Agreement relating to Blue Fountain's failure to Deliver and/or the Condition and termination shall be the only remedy available to the Client under this clause 7.

7.4 Blue Fountain shall be entitled to charge for works carried out prior to any suspension of work at the request or default of the Client. Blue Fountain shall be at liberty to re-assign its staff and resources to other work. Any work suspended for the reasons aforesaid shall recommence at Blue Fountain's absolute discretion. In the event of Blue Fountain's staff and resources assigned to the Client's project being unable to perform any other work for any other Clients, on the assigned days, then Blue Fountain reserves the right to charge the Client for waiting time at a rate of [£400] per man-day.

7.5 The failure of the Client to provide any Content within thirty (30) working days of the due date (provided it has not elected to postpone the Services in accordance with clause 5.4 above) Blue Fountain shall be entitled to terminate the Agreement and termination shall be the only remedy available to Blue Fountain provided except for the Fees which shall be paid by the Client..

7.6 Blue Fountain reserves the right to charge the Client in respect of any additional work involved where the Content supplied by the Client is not clear, legible or is incomplete.

7.7 Risk in the Works shall pass to the Client on Delivery. If any part of the Works shall thereafter be lost, destroyed or damaged Blue Fountain shall promptly replace the same or similar subject to the Client paying the full cost of such replacement.

7.8 Blue Fountain shall supply the Services to the address provided by the Client unless otherwise agreed in writing by an authorized officer of each of the parties.

7.9 Any transportation, including by Blue Fountain or its agent or contractor is for the Blue Fountain's account and at the Blue Fountain's risk. Any costs in transportation or additional insurance incurred by Blue Fountain shall be borne by Blue Fountain.

7.10 The Services shall be inspected by the Client and shall notify Blue Fountain within 14 days of Delivery of any alleged defect, shortage or damage. Failure to do so shall be deemed as acceptance by the Client of Services.

8. Change Control

8.1 At any time prior to the Delivery Date Blue Fountain may in writing recommend or and the Client in consideration of a further payment may in writing request from time to time changes to any part of the Specification. Notwithstanding anything to the contrary in these Conditions neither party shall be under any obligation to agree to any request or recommendation for a change.

8.2 Any investigation into the proposed change shall be carried out only on the Client's prior written

instruction and following investigation (if any) Blue Fountain will give a written estimate showing the increase or decrease in the Fees and any related effect on other contractual matters should the proposed change be implemented.

8.3 Should the Client wish to proceed with the proposed change it will instruct Blue Fountain in writing of its wish within [10] working days of the receipt of the written estimate (or such longer period as may be agreed). Those parts of these Conditions affected by the change will then be deemed to be modified accordingly.

8.4 Until any change is formally agreed between Blue Fountain and the Client Blue Fountain will continue to perform and be paid for the Services as if the change had not been proposed. If the proposed change represents a significant alteration from the Specifications set out in any Services Schedule then Blue Fountain may make a reasonable charge for implementing the proposed change.

8.5 The performance of any Services can at any time, without notification to the Client and at no liability to Blue Fountain, be modified or adapted to the technical standards commonly in force in the reasonable opinion of Blue Fountain.

8.6 Blue Fountain shall be entitled to, following written notice to the Client, alter any Payment Schedule details for the purposes of clause 8.5.

8.7 The Client shall have the right to terminate the Agreement only if any price increase under clause 8.6 is not acceptable by the Client and termination shall be the only remedy the Client is entitled to.

9. Payment

9.1 In consideration for performance of the Services, the Client shall pay the Fees in accordance with the Payment Schedule or Agreement, at the time set out therein.

9.2 All sums payable under any Agreement are exclusive of VAT and other taxes, if any, which shall be charged in addition at the prevailing rate and shall be paid by Client on submission of a valid tax invoice.

9.3 Title to any product, software, Works or any Services where applicable shall not pass to the Client until Blue Fountain has received full payment of the Fees or where any Works are hired to the Client the title shall remain with Blue Fountain in any event.

9.4 Furthermore, the Client shall pay such reasonable out-of-pocket expenses incurred by Blue Fountain as are agreed in writing in advance, together with such sums as may become due under clause [5.7] or [7.4] of these Conditions.

9.5 Payment of the Fees and other charges are due within [30] days of the date of an invoice from Blue Fountain. Blue Fountain shall be free to issue any invoice at any time. Blue Fountain shall be entitled to charge interest on late payments at the rate of 4% above the base rate of [Barclays Bank PLC] current during that time on any amount outstanding, which is not paid in accordance with this clause. Blue Fountain is aware of its rights under the Late Payment of Commercial Debts (Interest) Act 1998.

9.6 Unless otherwise stated the Fees and tariffs are those in force at the time of payment being due and may be set out in the Payment Schedule.

9.7 For the avoidance of doubt and unless otherwise stated in writing the Client has sole responsibility for all payment of Fees.

9.8 Blue Fountain shall be entitled to increase any Fees in any Payment Schedule following prior notice to the Client.

9.9 The Client authorises Blue Fountain to offset at any time and without notification any amounts owed to Client the amount owed by the Client to Blue Fountain.

9.10 Blue Fountain reserve the right to invoice any part of the Services under separate invoices.

10. Intellectual Property Rights

10.1 Intellectual Property Rights in the Works and Services or which arise out of or are acquired in the performance of the Agreement are and shall remain vested in Blue Fountain and the Client shall not be entitled to alter, amend, adapt or use the Intellectual Property Rights without the prior written consent of Blue Fountain.

10.2 All software developed by Blue Fountain Systems Ltd is released using the GNU Lesser General Public License <http://www.gnu.org/copyleft/lesser.html>.

10.3 Blue Fountain shall be entitled to include a footer credit or similar in an appropriately unobtrusive manner containing an appropriate acknowledgement of the Intellectual Property Rights of Blue Fountain and of the work carried out by Blue Fountain including a link to own web site at [www.bluefountain.com]

10.4 Blue Fountain shall be entitled to use the trading names and trade marks of the Client (in a reasonable manner) in the production of corporate brochures, press releases and similar printed or online materials solely for the purposes of promoting Blue Fountain and its Services to third parties subject to the Client's prior approval. Blue Fountain shall supply the Client with copies of such use on request.

10.5 The Client shall at the earliest opportunity: (a) notify Blue Fountain of any infringement or suspected infringement by a third party of Blue Fountain's Intellectual Property Rights or misuse of their confidential information, to the extent that they become aware of such infringement or misuse; (b) notify Blue Fountain of any threat or notice of proceedings claiming intellectual property infringement or breach of confidence which is received and which relates to the Services; and (c) provide Blue Fountain (at the other's reasonable expense) with all reasonable assistance that may be required in order to deal with such infringement or claim.

10.6 All risks in the Works (if any) shall pass to the Client on delivery from Blue Fountain.

10.7 The Intellectual Property Rights in and to the Content shall remain with the Client but shall be licensed to Blue Fountain for the purposes of carrying out the Services. Such licence shall automatically cease on termination of the relevant Agreement.

11. Confidentiality

11.1 For the purposes of this clause 11, Blue Fountain's "Information" as defined below includes all creative ideas originating with Blue Fountain which are sufficiently original, particularised, well developed and commercially valuable to constitute confidential information at law which are notified to the Client, and the Client acknowledges that such ideas shall always be communicated by Blue Fountain in circumstances of confidentiality, expressed or otherwise.

11.2 Each party ("the Recipient") shall ensure that any confidential information ("Information") disclosed to it by the other shall not be used or disclosed save as is strictly necessary for the purposes of any Agreement and shall return to the other promptly on request any such Information provided by the other on any media.

11.3 The restriction contained in this clause 11 shall not apply to the extent that (a) disclosure or use of the Information is required by law; (b) evidence is available that the Information was already in the unrestricted possession of the Recipient before disclosure to it by the other party; or (c) the information falls within the public domain other than through the default of the Recipient.

11.4 The obligation of confidentiality in clause 11 shall continue in force for [5] years following termination of the Conditions.

12. Security and control

The Client shall during the continuance of the any Agreement:

12.1 effect and maintain adequate security measures to safeguard the Services or the Works from access or use by any unauthorised person;

12.2 retain the Works and all copies thereof under the Client's effective control;

12.3 maintain a full and accurate record of the Client's copying and disclosure of the Works and shall produce such record to the Client on request from time to time.

13. Liability

13.1 Nothing in these Conditions shall exclude or restrict either party's liability for: (a) death or personal injury resulting from its negligence or that of its employees while acting in the course of their employment; (b) fraud or fraudulent misrepresentation; or (c) breach of the relevant warranties contained in clauses 11.4.

13.2 Either party shall not be liable to the party in contract, tort or otherwise howsoever arising out of or in connection with the Agreement and/or the Conditions for any indirect loss, consequential loss, loss of profits, business opportunity, goodwill or reputation.

13.3 Any Works delivered to the Client shall be treated where delivered as a group, as being covered under a separate and specific Agreement.

13.4 Problems including but not limited to technical problems, defects, non-delivery of part of the Works shall not relieve the Client from its duty to make payments due with respect to other Works.

13.5 The Client warrants that it has the right to supply all Content and shall indemnify Blue Fountain for any reasonable losses, costs, damages, claims, expenses or demands which Blue Fountain may reasonably incur to the extent that: (a) any claim that the Content infringes the Intellectual Property Rights of any third party (including without limitation that any hypertext links required to be included in the Content by the Client infringe the copyright of any third party web site); (b) any claim that the Content is defamatory, obscene, blasphemous or otherwise actionable under the laws and regulations of any jurisdiction; (c) any claim that the use of the Content in accordance with the Specifications is in breach of any agreement between the Client and any third party or is subject to their prior approval; and (d) any claim that the Content is in breach of any local or national laws, regulations or codes of conduct relating (by way of example only) to standards of advertising or age rating.

13.6 Blue Fountain shall indemnify the Client for any reasonable losses, costs, damages, claims, expenses or demands which the Client may reasonable incur to the extent that (a) any claim that the Works and the Services infringes the Intellectual Property Rights of any third party (b) any claim that the Works and the Service is in breach of any local or national laws, regulations or codes of conduct up to a maximum liability of £1,000,000.00.

13.7 The Client warrants that it is responsible for and is in receipt of all insurances necessary for any Works.

13.8 The Client warrants that it is responsible for the activities of any of its agents, employees or contractors who are on Blue Fountain premises or premises shared by the parties or leased or purchased for the benefit of the Client.

13.9 In view of the technical limitations inherent within the field of information communications and internet technology Blue Fountain do not provide any warranties as to the permanence of access or use of the Services, nor the quality, capacity or volume of the Services.

13.10 Subject to clause 11.7 and written notification by the Client sent by registered post, Blue Fountain shall use reasonable endeavours within a reasonable time period and according to its means to try and remedy the problem the subject of such written notification relating to the Services that is under its control.

13.11 The Client shall indemnify Blue Fountain for all losses, damages and costs incurred by Blue Fountain as a result of any breach by the Client of any warranty or term set out in the Conditions or Agreement.

13.12 Blue Fountain shall indemnify for losses, damages and costs incurred by the Client as a result of any breach by Blue Fountain of any warranty or term set out in the Conditions or Agreement up to a maximum liability of £1,000,000.00 .

13.13 Any indemnity from Blue Fountain shall be limited to the agreed net price for a maximum of three months for the Works of the Agreement in question. The responsibility for established physical damage is restricted to a limit of £1000.00

13.14 Blue Fountain shall have no responsibility to repair or replace any damaged Works and the Client accepts that the Client shall return such Works to the manufacturer directly or via Blue Fountain at the Client's sole expense.

13.15 Blue Fountain is not bound by any third party guarantee.

14. Suspension

14.1 Blue Fountain shall be entitled to suspend any Agreement without notice and without liability to itself where the Client:

14.1.1 has failed to pay the Fees at its fault;

14.1.2 has breached a warranty or term of the Agreement or Conditions;

14.1.3 has a simultaneous use of logins and passwords;

14.1.4 has failed to complete any necessary documentation;

14.1.5 has used the Services in an abusive or unlawful manner or has failed to comply with any acceptable use policy or similar in the reasonable opinion of Blue Fountain;

14.1.6 has a lack of security in the reasonable opinion of Blue Fountain;

14.1.7 has damaged the reputation of Blue Fountain.

14.2 Blue Fountain shall be entitled to continue invoicing the Client during any period of suspension and shall be entitled to continue any other Agreements not the subject of the suspension.

15. Termination

15.1 A party (the "Initiating Party") may terminate the Conditions and all Agreement or any Agreement with immediate effect by written notice to the other party (the "Breaching Party") on or at any time after the occurrence of: (a) an irremediable material breach by the Breaching Party of the Conditions; (b) a remediable breach by the Breaching Party of a material obligation under the Conditions or Agreement where the Breaching Party fails to remedy the Breach within 30 days starting on the day after receipt of written notice from the Initiating Party giving full details of the breach and requiring the Breaching party to remedy the breach and stating that a failure to remedy the breach may give rise to termination under this clause 12.1; or (c) more than one breach of the Conditions or Agreement by the Breaching Party, the cumulative effect of such breaches being: (i) sufficient to justify the inference that the Breaching Party would continue to deliver a substandard performance in relation to a substantial portion of the Agreement over the entire remaining period of the Agreement (or, in the case of the

Client, in relation to its obligations under clause 4; or (ii) serious in the widest sense of having a serious effect on the benefit which the Initiating Party would have otherwise derived in relation to a substantial portion of the Conditions or Agreement.

15.2 Either party may terminate the Condition and Agreement upon 30 day's written notice if the other is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation) or compounds with or convenes a meeting of its creditors or has a receiver, administrative receiver or administrator appointed or if any circumstances arise which would entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order.

15.3 Blue Fountain shall have the right at any time upon notice to the Client to terminate the provision of the Services in the event that: (a) the Client has failed to deliver the Client Content in accordance with the Content Delivery Schedule; or (b) the Client is in breach of its obligations under clause 4 of these Conditions. If the Services are not completed due to delays incurred as a result of the Client or the Client's agents or subcontractors and/or associated companies' acts or omissions (including without limitation their failure to provide the Client Content in accordance with the Content Delivery Schedule) then the dates and times set forth in any Agreement and the Delivery dates shall be extended accordingly.

15.4 All reasonable costs and expenses incurred by Blue Fountain by reason of any delay variation interruption or suspension of work arising from any act or omission of the Client it's employees agents or its subcontractors will be reimbursed to Blue Fountain by the Client, subject to Blue Fountain providing written particulars of such costs and expenses.

16. Consequences of Termination

16.1 Upon termination of the Conditions and/ or any Agreement all rights granted in the Conditions and/or the terminated Agreement shall cease and each party shall immediately or as soon as possible deliver up to the other and delivered to the second party or, at the request of the first party, destroy any copies which are not readily deliverable (such as copies held on the hard disk of any computer).

16.2 The termination of the Agreement for whatever cause shall not affect any provision of the Conditions or other Agreement which is expressed to survive or operate in the event of the termination of the Agreement and shall not prejudice or affect the rights of any party against the other in respect of any breach of the Conditions or Agreement or in respect of any monies payable by either party to the other in respect of the period prior to termination.

17. Force Majeure

17.1 Neither party shall be liable in damages or have the right to terminate any Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

18. Data protection

18.1 The parties undertake to comply with the provisions of the Data Protection Act 1998 (the "Act") and any related legislation in so far as the same relates to the provisions and obligations of the Conditions or Agreement.

18.2 Blue Fountain may hold information relating to the Client's non-payment, late payment or other payment history which may be held subject to the Act with an appropriate third party.

19. Exclusivity, Assignment and Sub-Contracting

19.1 Unless otherwise agreed: (a) the Services shall not be exclusive to the Client (meaning that Blue

Fountain may provide equivalent services to any third party); (b) Blue Fountain shall be entitled to sub-contract any of the Services to a suitable third party; (c) the Client shall not assign its rights or obligations under any Agreement without Blue Fountain's prior written consent.

20. Waiver

20.1 Failure by the party to exercise or enforce any right under any Agreement or these Conditions (including in the case of suspension under clause 11) shall not be deemed to be a waiver of any such right nor operate so as to prevent the exercise or enforcement of such right on any other occasion.

21. Validity

21.1 If any part, term or provision of any Agreement or these Conditions be held illegal or unenforceable, the validity or enforceability of the remainder of that Agreement or these Conditions shall not be affected.

22. Third Party Rights

22.1 The Contracts (rights of Third Parties) Act 1999 shall not apply to any Agreement or these Conditions and no person other than the parties to the Agreement or these Conditions shall have any rights under them, nor shall they be enforceable under that Act by any person other than the parties to them.

23. Agency, partnership

23.1 The Conditions or any Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in the Agreement.

24. Amendments

24.1 The Conditions or any Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties.

25. Announcements

25.1 The either party shall not issue or make any public announcement or disclose any information regarding the Agreement unless prior written consent has been obtained from the other party.

26. Notice

26.1 All notices under any Agreement or Conditions shall be in writing.

26.2 Notices shall be deemed to have been duly given:

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

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

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

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

in each case addressed to the most recent address, e-mail address, or facsimile number notified to

the other party.

27. Entire Understanding

27.1 These Conditions and any Agreement under them set out the entire agreement and understanding between the parties in respect of its subject matter and the Client acknowledges that it has entered into such Agreement in reliance only upon the representations, warranties and promises expressly contained or incorporated in these conditions and/or Agreement and save as expressly set out therein, Blue Fountain shall have no liability in respect of any other representation, warranties or promise made or given prior to the date of the Agreements, howsoever made or given, unless it was made or given fraudulently.

28. Successors and assignees

28.1 The Conditions and any Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in any Agreement shall include its successors and permitted assignees.

28.2 In any Agreement references to a party include references to a person:

28.2.1 who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under that Agreement (or any interest in those rights); or

28.2.2 who, as administrator, liquidator or otherwise, is entitled to exercise those rights,

and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party. For this purpose, references to a party's rights under any Agreement include any similar rights to which another person becomes entitled as a result of a novation of the Agreement.

28.3 The Client shall not be entitled to assign or transfer the benefits or obligations of these Conditions or Agreement to any third party without the prior written consent of Blue Fountain.

29. Non-solicitation

29.1 Both the Client and Blue Fountain agree that while these Conditions is in force and for a period of twelve (12) months thereafter, they shall not directly or indirectly solicit or offer employment to any of the other's staff who have been involved in or associated with any Agreement without the other's prior written consent.

30. Law and Jurisdiction

30.1 These Conditions and the Agreement shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of its Courts.