

THIS AGREEMENT is dated

PARTIES

- (1) **ESALONI LIMITED** incorporated and registered in England and Wales with company number **06468569** whose registered office is at Office Number 304, Boundary House, Cricket Field Road, Uxbridge, UB8 1QG. **(SUPPLIER)**.
- (2) **Client Details** whose registered office is, UK. **(CUSTOMER)**.

Background

Esaloni Systems Limited is a Data Warehouse, Web, Software and Mobile Development firm. Esaloni Limited specialises in providing specialist expertise in Cerner based Data warehouse software solutions within the Health industry. The **Customer** wishes to engage **Esaloni Limited** to the **provide service and solution design** according to their specific Cerner EPR implementation needs. Both the parties have agreed to enter into this agreement on the terms set out below.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions

Business day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Input material: all documents, information and materials provided by the Customer relating to the Services, including computer programs, data, reports and specifications.

Intellectual property rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Pre-existing materials: all documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, reports and specifications.

Project: the project as described in the Project Plan.

Project Plan: the detailed plan describing the Project and setting out the estimated timetable and responsibilities for the provision of the Services agreed in accordance with clause 3.

Services: the services to be provided by the Supplier under this agreement as set out in the Project Plan or provided as specification during execution of the project together with any other services which the Supplier provides or agrees to provide to the Customer.

- 1.2 The Schedule forms part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedule.
- 1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.4 A reference to **writing** or **written** includes e-mail.

2. COMMENCEMENT AND DURATION

- 2.1 The Supplier shall provide the Services to the Customer on the terms and conditions of this agreement and from the date specified in the Project Plan.
- 2.2 The Services supplied under this agreement shall continue to be supplied until the Project is completed in accordance with the Project Plan and after that, shall continue to be supplied unless this agreement is terminated by one of the parties giving to the other not less than one months' notice, such notice to expire on or after the date specified in the Project Plan for completion of the Project, unless this agreement is terminated in accordance with clause 11 or 13.

3. PROJECT PLAN

- 3.1 The Supplier and the Customer shall discuss and agree the Project Plan – Schedule – 1, which sets out the requirements and specifications of the services requested from the Supplier, including a description of what work is to be done, dates by which each stage of the work is requested to be

started and finished, Input Materials and such other information as the Supplier may request.

- 3.2 Once the Project Plan has been agreed, the Supplier and Customer shall both sign a copy of it and it shall become Schedule 1 to and subject to this agreement and thereafter no amendment shall be made to it except in accordance with clause 6 and clause 14.

4. SUPPLIER'S OBLIGATIONS

- 4.1 The Supplier shall use reasonable endeavours to provide the Services to the Customer in accordance with the Project Plan in all material respects.
- 4.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Project Plan, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.
- 4.3 The supplier should complete the application on or before the delivery date mentioned in the Schedule 1

5. CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Services;
 - (b) provide appropriate work space, technical provision, remote connectivity and shared drive
 - (c) provide, in a timely manner, such input Material and other information as the Supplier may require, and ensure that it is accurate in all material respects;
 - (d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the installation purposes
 - (e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises.
- 5.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

- 5.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- 5.4 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of 12 months after the termination of this agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services without the written agreement of the Supplier
- 5.5 Any consent given by the Supplier in accordance with clause 5.4 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor, unless it has previously been agreed with the Supplier that this charge will not be levied.

6. CHANGE CONTROL

- 6.1 The Supplier and Customer shall liaise regularly to discuss matters relating to the Project. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 6.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
 - (b) any necessary variations to the Supplier's charges arising from the change;
 - (c) the likely effect of the change on the Project Plan; and
 - (d) any other impact of the change on this agreement.

- 6.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services, the relevant Project Plan or specification provided during the execution of the project and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 14.
- 6.4 Notwithstanding clause 6.3, the Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the Supplier requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.
- 6.5 The Supplier may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with clause 7, these will be agreed with the Customer ahead of any charged being incurred

7. CHARGES AND PAYMENT

- 7.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in Schedule 1, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Clause 7.2 shall apply if the Supplier provides Services on a time and materials basis and clause 7.3 shall apply if the Supplier provides Services for a fixed price. The remainder of this clause 7 shall apply in either case.
- 7.2 Where Services are provided on a time and materials basis:
- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates, as amended from time to time in accordance with clause 7.5;
 - (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 8.00am and 6.00pm on weekdays (excluding public holidays);
 - (c) the Supplier shall be entitled to charge an overtime rate at an agreed percentage of the normal daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Project outside the hours referred to in clause 7.2(b);
 - (d) all charges quoted to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate;

- (e) the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 7.2 and clause 7.4.
- 7.3 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in Schedule 1 as amended from time to time in accordance with clause 7.5. The Customer shall pay the total price to the Supplier (without deduction or set-off) in instalments, as set out in Schedule 1. At the end of a period specified in Schedule 1 in respect of which an instalment is due, the Supplier shall invoice the Customer for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in clause 7.4. At the end of each phase set out in Schedule 1, the invoiced amount has to be paid in full by the client.
- 7.4 Any fixed price and daily rate contained in Schedule 1 excludes VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 7.5 The parties agree that the Supplier may review and increase the charges set out in Schedule 1, provided. The Supplier shall give the Customer written notice of any such increase at least one month before the proposed date of that increase. If such increase is not acceptable to the Customer, it may terminate the agreement by giving two months written notice to the Supplier.
- 7.6 The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 14 days of receipt to a bank account nominated in writing by the Supplier.
- 7.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date:
 - (a) the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
 - (b) the Supplier may suspend all Services until payment has been made in full.
- 7.8 All sums payable to the Supplier under this agreement shall become due immediately on its termination, despite any other provision. This clause

7.8 is without prejudice to any right to claim for interest under the law, or any such right under this agreement.

- 7.9 All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Services and the Pre-existing Materials shall be owned by the Supplier. Subject to clause 8.2, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services. If this agreement is terminated, this licence will automatically terminate.

- 8.2 The Customer acknowledges that, where the Supplier does not own any of the Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

9. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY

- 9.1 The Customer undertakes that it shall not at any time disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain, except as permitted by clause 9.2.

- 9.2 The Customer may disclose the Supplier's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 9; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 9.3 The Customer shall not use the Supplier's confidential information for any purpose other than to perform its obligations under this agreement.
- 9.4 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials) shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

10. LIMITATION OF LIABILITY

- 10.1 Nothing in this agreement limits or excludes the Supplier's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 10.2 Subject to clause 10.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of or damage to goodwill;
 - (f) loss of use or corruption of software, data or information;
 - (g) any indirect or consequential loss.
- 10.3 Subject to clause 10.1 and clause 10.2, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, to the equivalent of the total charges paid by the Customer in that period.
- 10.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

11. TERMINATION

11.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 28 Business Days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 Business Days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or (being a partnership) has any partner to whom any of the foregoing apply;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- (j) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (k) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 15 Business Days;
- (l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(d) to clause 11.1(k) (inclusive);
- (m) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (n) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
- (o) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

12. CONSEQUENCES OF TERMINATION

12.1 On termination or expiry of this agreement:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the following clauses shall continue in force: clause 8 (Intellectual property rights), clause 9 (Confidentiality and the Supplier's property), clause 10 (Limitation of liability), clause 12.1, clause 22 (Notices), and clause 24 (Governing law and jurisdiction).

12.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

13. FORCE MAJEURE

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this

agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this agreement by giving 10 Business Days' written notice to the affected party.

14. VARIATION

Subject to clause 3 and clause 6, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

17. SEVERANCE

17.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

17.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. ENTIRE AGREEMENT

- 18.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.
- 18.3 Nothing in this clause shall limit or exclude any liability for fraud.

19. ASSIGNMENT AND OTHER DEALINGS

- 19.1 This agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.
- 19.2 The Supplier may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this agreement.

20. NO PARTNERSHIP OR AGENCY

- 20.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 20.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

21. THIRD PARTY RIGHTS

No one other than a party to this agreement shall have any right to enforce any of its terms.

22. NOTICES

- 22.1 Any notice (or other communication) given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by e-mail to the e-mail address notified by the parties from time to time.
- 22.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt.
- 22.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 22.4 This agreement shall terminate;
- (a) on the Expiry Date or completion of the Services; or
- on the Client giving the Supplier not less than 30 days' prior notice; or
- on the Supplier giving the Client not less than 30 days' prior notice.

23. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

24. GOVERNING LAW AND JURISDICTION

- 24.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 24.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 Project Plan

Project Name	Consulting Services
Commencement date	
Planned completion date	
Development Location	Client and Suppliers Site (Gerrards Cross Office)
Duration of the contract	3 Months
Payment Terms	Biweekly Payment
Consultant Rate – Senior Data Architect/Lead Developer	
Consultant Rate – Senior Tester	
Consultant Rate – CDE IFF Reconciliation	
Total	

Executed as a deed by

Signed by:

Director Esaloni

for and on behalf of **Esaloni Limited**

.....

Signature

Date:

Executed as a deed by

Signed by:

Programme Manager

for and on behalf of **Chelsea and
Westminster Hospital**

.....

Signature

Date: