

Esira Limited
Standard Terms and Conditions for the
Provision of Consultancy Services

1 DEFINITIONS

In these terms, unless the context requires otherwise, the following expressions shall have the following meanings:

"Bespoke Software Development" means the supply by Esira of information technology services for the conception, creation and/or development of software or the like that conforms to the Customer's requirements as documented in the Specification (for example, without limitation, web-site development, new software etc.), as opposed to the supply of third party produced software which is specifically excluded from these terms, and "Bespoke Software" shall be construed accordingly;

"Commencement Date" means the date set out in the Statement of Work described as the commencement date;

"Confidential Information" means all information marked as "Confidential" and disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party"), or to any employee or sub-contractor of the Receiving Party (the "Recipient"), whether before or after the date of these terms or the Contract including, without limitation, any information relating to the Disclosing Party's customers, products, operations, processes, plans or intentions, product information, know how, design rights, trade secrets, market opportunity and business affairs;

"Contract" means each agreement for the supply of the Services and/or Bespoke Software, as referred to in Clause 2.1;

"Customer" means the person whose details are set out in each Statement of Work;

"Customer's Data" such data stored on the Customer's Systems irrespective of the type of storage media or format;

"Customer's System" such computers, software, hardware, printers, storage devices and computer networks operated by the Customer;

"Deliverables" means the product of the Services described in the Statement of Work which may include without limitation, Bespoke Software, data storage, reports and/or other documents;

"Estimated Delivery Date" means the estimated date of delivery of the Services and/or Bespoke Software which may be set out in the Contract, or if not, communicated by Esira to the Customer;

"Intellectual Property" means patents, trade marks (registered and unregistered), utility models, all components of copyright (including rights of transcription, distribution, publishing and moral rights) and other exclusive rights of utilisation, rights in service marks, get-up, logos, designs (whether registered or unregistered) and inventions, trade and business names, rights in goodwill or reputation, database rights (including extraction and re-utilisation rights), rights in compilations, any rights similar to any of the above that come into existence (whether by introduction of a new right through legislation or by some other means), applications for any such rights and interests in any of the above and all rights or forms of protection of a similar nature to any of the above or having equivalent effect anywhere in the world;

"Esira" means Esira Limited of 3 Errochty Grove Perth, PH1 2SW;

"Esira Companies" means Esira and any body corporate which is from time to time: (i) a subsidiary of Esira; or (ii) a holding company or a subsidiary of a holding company of Esira;

"Permitted Purpose" means the purpose for which the Customer is licensed to use the Service and/or Deliverables as set out in the Statement or Work;

"Price" means the price for the provision of the Services and the Deliverables;

"Services" shall mean any information technology related services that are detailed in the Statement of Work (including any Deliverables) but excludes the sale and supply of hardware, sale and licensing of software, provision of managed services, supply of maintenance and/or support services. The

Services shall include Bespoke Software Development where a Specification for such software development is detailed in writing in the Statement of Work.

"Site" means the premises where the Services and/or the Deliverables are to be delivered or installed

"Specification" means the specification for the Bespoke Software to be supplied by Esira;

"Statement of Work" shall mean the schedule in the form attached to these terms which upon completion and signature by both parties shall, together with these terms, form the Contract between the Customer and Esira. Each Statement of Work shall be identifiable by a unique service schedule number ("SSN").

1.1 In these terms references to:

- 1.1.1 persons include bodies corporate, incorporated associations and partnerships;
- 1.1.2 Clauses are to clauses of these terms;
- 1.1.3 a "subsidiary" or "holding company" shall be construed in accordance with Sections 736 and 736A of the Companies Act 1985; and
- 1.1.4 any statutory provision shall include reference to a statutory provision as modified or re-enacted or both from time to time whether before or after the date of these terms or a Contract.
- 1.1.5 The headings in these terms or a Contract shall not affect the interpretation of these terms.
- 1.1.6 Words denoting the singular include the plural and vice versa; words denoting any one gender include all genders and vice versa, and reference to a person shall include an individual, partnership, body corporate and unincorporated association.
- 1.1.7 References to any party shall include its lawful successors in title and permitted assigns.
- 1.1.8 The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.

2 SCOPE AND TERM

- 2.1 Subject to Clause 2.4, these terms and conditions shall apply to all Services requested by the Customer from Esira. A separate agreement for the Services on these terms and conditions, together with any additional terms recorded in writing in the Statement of Work by the parties as applicable, shall come into force on the date on which each Statement of Work is agreed in writing between the parties (a "Contract"). No Statement of Work shall be binding on Esira unless and until accepted by Esira in writing.
- 2.2 Subject to Clause 2.4, in respect of each Statement of Work and Contract, these terms and conditions shall apply to the exclusion of any terms or conditions contained or referred to in any purchase order or other documentation submitted by the Customer or in correspondence or implied by trade, custom or course of dealing (whether or not in conflict with or additional to these terms and conditions).
- 2.3 Subject to clause 2.1 if any Contract contains provisions which are inconsistent or which conflict with these terms and conditions, the provisions of such Contract will prevail to that extent.
- 2.4 These terms and conditions shall not apply to any services requested by the Customer which the parties intend to be supplied under a written bespoke agreement agreed between the parties.

3 LEAD TIMES AND ORDERING

- 3.1 The Customer acknowledges that there are lead times between ordering Services, agreement of Statements of Work and the commencement of performance of Services. The parties shall cooperate in the ordering and agreement of Statements of Work to meet each parties demands and expectations.
- 3.2 Subject to Clause 2.1, the Customer may at any time during the currency of this Agreement request Services from Esira.

4 SERVICE ESTIMATES

- 4.1 At the Customer's request, Esira shall provide an estimate of charges for any services or bespoke software the Customer is contemplating purchasing. Unless explicitly stated by Esira, such estimate shall not be binding on Esira or convert the Contract to a fixed price contract in respect of such Services.
- 4.2 If following the agreement of a Contract in respect of which an estimate has been given Esira foresees that any estimate will be materially exceeded, it shall, within a reasonable period of time, notify the Customer. In such event, the Customer may elect to terminate the Contract upon fourteen (14) days notice in writing.
- 4.3 Where a Contract provides that the Services shall be performed for a fixed price, the relevant Contract may not be terminated by the Customer before completion of the Services except pursuant to Clause 14.1 of these terms.
- 4.4 Should the Customer terminate these terms in breach of Clause 4.3, then the Customer shall, without prejudice to any other rights, be liable to pay Esira by way of liquidated damages a sum equal to 50% of the anticipated cumulative billings which but for such termination would have been payable by the Customer up until the earliest time when the Customer was contractually entitled to terminate the Contract. The Customer agrees that this sum is a genuine pre-estimate of the likely loss that Esira would suffer in the event of wrongful termination of the Contract.
- 4.5 The Customer shall pay or reimburse to Esira (on production of vouchers and/or other evidence) all reasonable and proper expenses incurred in connection with the provision of the Services including but not limited to travel and accommodation expenses.
- 4.6 Each Contract shall designate a project manager for the Customer and a project manager for Esira who shall each be responsible for directing the specific activities of their respective employees, agents and contractors and each parties' respective project manager shall have sufficient authority to represent their respective party on all technical, administrative (non legal) and supervisory matters arising in connection with the performance of the Services. Either party may replace its project manager upon reasonable notice to the other party, provided such replacement has the appropriate skills, knowledge and expertise to perform the role.

5 PERFORMANCE OF SERVICES

- 5.1 Unless otherwise agreed in a Contract, Esira shall, subject to Clause 4.5 at its own cost and expense, from the Commencement Date provide the Services to the Customer at the Site in a timely and efficient manner. All Services shall be provided between the hours of [0900hrs] and [1700hrs] unless otherwise stated in the Statement of Work.
- 5.2 The Customer shall:-
 - 5.2.1 provide suitable access to the Site and permit Esira, its employees, agents and contractors entry onto the Site with vehicles and equipment for all purposes in connection with the Contract;
 - 5.2.2 provide, promptly, any assistance, resources, information, facilities or other matters reasonably requested by Esira to allow the Contract to be performed, including without limitation, any personnel, equipment and systems at the Customer's ready disposal.
- 5.3 The Customer agrees that Esira shall be relying upon the accuracy of all representations, statements, information, materials and documents ("Data") supplied by the Customer in connection with the Services and Esira shall be under no obligation to test, check or confirm the accuracy of any Data prior to performing the Services unless as required by the Contract. Esira accepts no responsibility or liability whatsoever for or resulting from any Data prepared and/or supplied by the Customer or a third party.
- 5.4 Esira shall use its reasonable endeavours to deliver the Services on or before the Estimated Delivery Date or as soon thereafter as shall be practicable.
- 5.5 Dates and times for delivery or performance by Esira are estimates only and time shall not be of the essence in respect of these and Esira shall, subject to clause 5.6, not be liable for any loss, damage, cost or expense caused directly or indirectly by any delays in delivery. Esira may deliver early.
- 5.6 Notwithstanding Clauses 5.4 and 5.5, if delivery by Esira of the Services has not been made ninety (90) days after the Estimated Delivery Date, the Customer shall be entitled to terminate the Contract and any liability of Esira however arising, as referred to in Clause 15.4, shall be limited to a credit of the price due for the Services not delivered. In no circumstances shall Esira have any further liability to the Customer in damages or otherwise for non-delivery or late delivery of any of the Services.
- 5.7 Esira may deliver the Services in stages as agreed with the Customer. In such an event, each instalment of the Services delivered shall be separately invoiceable and payable.
- 5.8 Any goods, materials, plant or equipment to be supplied in connection with the Services shall be supplied on Esira's standard terms and conditions of sale.

6 ACCESS TO SYSTEMS

- 6.1 The Customer shall provide for use by Esira, free of charge, access to the Customer's Systems and the Customer's Data as reasonably required for use in connection with the performance of the Services.
- 6.2 The Customer shall remain responsible for and shall pay all costs (including, without limitation, repair and maintenance costs) in connection with the Customer's Systems and the Customer's Data and Esira shall have no liability to the Customer and the Customer shall hold harmless and indemnify Esira in the event that Esira suffers loss and/or is unable to perform either in whole or in part any of its obligations hereunder as a result of the removal by the Customer of the Customer's Systems or the Customer's Data (or any part thereof) or due to a failure of or fault in the Customer's Systems or the Customer's Data howsoever caused save in circumstances where such failure or fault arises as a consequence of any failure on the part of Esira to observe the provisions of paragraphs 6.4.1 to 6.4.3 below.
- 6.3 The Customer hereby grants to Esira a non-exclusive royalty-free licence to use the Customer's Systems and the Customer's Data to the extent reasonably required to perform the Services which licence shall terminate upon termination of the Contract for whatever cause.
- 6.4 Esira agrees and undertakes as follows namely that:-
 - 6.4.1 Esira will use the Customer's Systems and the Customer's Data at all times strictly for the purpose of carrying out the Services and for no other purpose;
 - 6.4.2 Esira will implement certain reasonable control procedures immediately prior to access to the Customer's Systems as reasonably directed by the Customer subject to any related costs being borne by the Customer;
 - 6.4.3 Esira shall take all reasonable precautions to avoid viruses being introduced onto the Customer's Systems and the Customer's Data by Esira or its employees;
 - 6.4.4 Esira will not copy any data from the Customer's Systems nor will it download, modify, reverse engineer, de-compile, disassemble, create derivative works of any data, software programs or any third party software currently licensed to the Customer which forms part of the Computer System unless required in connection with the performance of the Services; or
 - 6.4.5 the Customer's Systems and the Customer's Data will remain at all times the property of the Customer.

7 DEVELOPMENT OF BESPOKE SOFTWARE

- 7.1 If the Services include the provision of Bespoke Software then the following provisions shall apply.
- 7.2 If not already agreed and documented in the Statement of Work, the parties shall develop and agree the Specification for the Bespoke Software. Esira shall have no obligation to produce the Bespoke Software until the Specification is agreed and documented.
- 7.3 Subject to Clause 5, Esira shall, in accordance with the Specification and any agreed project plan, develop, produce and deliver the Bespoke Software to the Customer.
- 7.4 The Customer shall inspect and test the Bespoke Software delivered by reference to the Specification immediately on delivery and shall no later than fourteen (14) days after delivery (the "Claims Period") notify Esira in writing of any non-conformity of the Bespoke Software with Clause 8.1.2. Non-conforming Bespoke Software shall be rejected by the Customer by delivery of a notice of rejection to Esira such notice describing in detail the extent of the non-conformities. The Customer shall lose the right to reject non-conforming Bespoke Software delivered upon expiry of the Claims Period.
- 7.5 In the absence of receipt of any claims or rejection notices by Esira from the Customer within the Claims Period in respect of Bespoke Software, the Customer shall be deemed to have accepted the Bespoke Software delivered.

8 WARRANTIES AND CLAIMS

8.1 Esira warrants that:-

- 8.1.1 the Services shall be provided with reasonable care and skill;
 - 8.1.2 the Bespoke Software will, for a period of 30 days from the date of acceptance (the "Warranty Period"), conform to, and operate in accordance with the Specification. [Any exclusions or conditions?]
- 8.2 Any claim that the Services and/or Bespoke Software do not conform with Clause 8.1 must be notified to Esira within the Warranty Period.
- 8.3 Subject to Clause 8.4, the Customer's sole remedy in relation to any breach of Clause 8.1 shall be that Esira shall perform, at its sole expense, all rectification services necessary to render the Services or Bespoke Software compliant with the above warranties.
- 8.4 If Esira is unable to rectify the Services or Bespoke Software within 90 days of the date of receipt of the claim by Esira then the Customer shall be entitled to terminate the Contract and any liability of Esira however arising, as referred to in Clause 15.4, shall be limited to a credit of the price due for the non-conforming Services or Bespoke Software. In no circumstances shall Esira have any further liability to the Customer in damages or otherwise for non-conforming Services or Bespoke Software.
- 8.5 Except for the warranties and conditions expressly contained or referred to in these terms and conditions, or in the Contract, Esira makes no other warranties or representations regarding the Services, Deliverables or Bespoke Software and all warranties, conditions and other terms express or implied statutory or otherwise in respect of compliance with descriptions, the quality or the fitness for purpose of the Services or Bespoke Software which are not expressly set out in these terms or the Contract are excluded to the fullest extent permitted by law.

9 VARIATIONS

- 9.1 The Customer shall be entitled at any time prior to completion of the Services to request that Esira modify any aspect of the scope of such Services.
- 9.2 The Customer shall provide Esira with full particulars of any requested modification and such further information as Esira may reasonably require. Within fourteen (14) days of receipt of such request Esira shall inform the Customer in writing of the alterations to any timeframe that may have been agreed for completion of the Services (if any) and any additional prices payable to implement such modification. For the avoidance of doubt, the Price originally payable for the Services or Bespoke Software shall not be reduced because of a request for modification.
- 9.3 If the Customer elects to proceed with such modification then the timeframe and prices payable shall be amended as indicated by Esira pursuant to Clause 9.2 above and accepted by the Customer in writing.

10 INTELLECTUAL PROPERTY AND SOFTWARE LICENCE

- 10.1 Unless stated otherwise in the Contract, ownership of all Intellectual Property created or developed or contained in the Deliverables during the supply of the Services shall remain the property of Esira.
- 10.2 On payment of the Price in full for the Services provided, the Customer shall have a non-exclusive and non-transferable, royalty-free licence to use the Deliverables for the Permitted Purpose (the "Licence").
- 10.3 The Customer shall have no right to, and shall not and shall ensure that none of its employees, agents or contractors:-
- 10.3.1 assign or transfer the Licence or deal with its interest in the Licence or grant sub-licences of the Deliverables to any person or otherwise permit any person to use the Deliverables;
- 10.3.2 copy the Deliverables nor if the Deliverables are Bespoke Software download, modify, reverse engineer, input, de-compile, disassemble, create derivative works of or otherwise interfere with the Deliverables save as permitted by the Copyright Designs and Patents Act 1988, in each case, without first obtaining consent in writing from Esira.
- 10.4 Esira will, at its own expense, defend any legal action brought against the Customer to the extent that it is based on a claim that the Services or Deliverables (or any part thereof), when used in accordance with any accompanying documentation, infringes the copyright of any third party, and Esira will pay any final judgement awarded to the third party against the Customer and reasonable legal costs on behalf of the Customer, PROVIDED THAT the Customer shall (i) notify Esira promptly in writing of any such claim; (ii) permit Esira to have sole control of the defence, compromise or settlement of such claim, including any appeals; (iii) not make any prejudicial statements or settlement offers without the prior written consent of Esira; (iv) fully co-operate with Esira in the defence or settlement of such claim; and (v) the claim does not arise as a result of any breach by the Customer of a term of the Licence.
- 10.5 Should the Deliverables and/or the Services become, or in Esira's opinion be likely to become, the subject of any such infringement claim, the Customer shall permit Esira, at Esira's option and expense, to (i) procure for Customer the right to continue using the Deliverables and/or the Services, or (ii) replace or modify the Deliverables and/or the Services so that they become non-infringing, or (iii) terminate the Customer's right to use the Deliverables and/or the Services, upon which termination the Customer shall, and shall procure that its employees, agents and contractor's, promptly destroy all copies of the Deliverables and/or the Services and certify the same to Esira.
- 10.6 Esira shall have no liability for any Intellectual Property infringement claim to the extent that it is based on (i) the use or combination of Deliverables (where the Deliverables are Bespoke Software) with software, hardware or other materials not recommended by Esira, provided such infringement would not have arisen but for such use or combination; or (ii) the use of the Deliverables in a manner other than that for which it was designed or contemplated as evidenced by Esira's documentation; or (iii) any unauthorised modification of the Deliverables or Services by any party; or (iv) any compliance with designs, plans or specifications furnished by Customer.

11 PRICE AND PAYMENT

11.1 The Customer shall pay to Esira the Price as invoiced.

11.2 All valid invoices issued to the Customer pursuant to these terms or a Contract shall be payable within 28 days of date of issue. Invoices in respect of Services to be supplied at a fixed price shall be issued in advance of the supply of the Services. The Customer shall not be permitted to make any deduction from the Price whether in respect of set-off, counterclaim or otherwise.

11.3 Unless otherwise agreed in writing with the Customer, Esira shall be entitled to allocate payments received to settle (in full or in part) any sums due from the Customer under any Contract, in any order or manner Esira determines, and in particular shall be entitled to apply any part payment to settle outstanding interest on overdue amounts, ahead of principal.

11.4 The Price, and any additional charges payable hereunder, are exclusive of VAT, customs charges and duties, which shall be paid by the Customer in the amount and manner prescribed by law.

11.5 Notwithstanding Clause 11.2 or any other arrangements for provision of credit which Esira may have agreed with the Customer in respect of a Contract, the whole price of all Products and/or Services bought or agreed to be bought by the Customer shall be immediately payable without demand in any circumstances entitling Esira to terminate the Contract pursuant to Clause 13.1.

11.6 Without prejudice to any of its other rights, if the Customer fails to make any payment when due Esira shall be entitled to:

11.6.1 suspend its obligations under the Contract for so long as any payment due hereunder remains outstanding; and/or

11.6.2 charge interest on the overdue amount at the statutory rate, and otherwise in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and/or

11.6.3 charge an Administration fee of 0.5 Hrs of the customers hourly rate.

12 TUPE ON AWARD

12.1 The parties agree that they do not regard this Agreement or the commencement of the Services or any variation to the Services as constituting a "relevant transfer" for the purposes of the Transfer of Undertakings (protection of Employment) Regulations 1981 (as amended) ("TUPE"). Accordingly, if a contract of employment between the Customer (or any other person previously engaged in providing to the Customer like services as those contemplated in whole or part by the Contract) and any person has affect as if originally made between Esira and such person as a result of TUPE, or if any claim is made to such effect, then:-

- 12.1.1 Esira shall as soon as reasonably practicable, following its becoming aware of the same, notify the Customer who shall be afforded an opportunity to engage or re-engage any such employee and consult with the Customer as to how such employee is to be dealt with;
- 12.1.2 notwithstanding Clause 12.1.1, Esira may within one (1) month of becoming aware of the application of TUPE to any such employment contract terminate such contract; and
- 12.1.3 the Customer shall indemnify and keep Esira indemnified at all times from and against all claims, expenses and incidental costs (on a full indemnity basis) reasonably incurred by Esira in respect of the employment of and the termination of the employment of any such employee and in respect of any claim arising out of the actual or alleged application of TUPE to these terms or a Contract or the commencement of the Services or any variation of the Services.

13 TERMINATION

13.1 Either party ("Initiating Party") may terminate a Contract at any time forthwith by notice in writing if:

- 13.1.1 the other party (the "Breaching Party") is in material breach of any of its material obligations under that Contract and (if the breach is capable of remedy) fails to remedy the breach within thirty (30) days after receipt of notice in writing from the Initiating Party giving particulars of the breach and requiring the Breaching Party to do so;
- 13.1.2 a resolution is passed or an order is made for the winding up (or equivalent order in the relevant jurisdiction) of the other party otherwise than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction and in such manner that the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the obligations imposed on the other party under the Contract; or
- 13.1.3 the other party becomes subject to an administration order; a liquidator, receiver or administrative receiver or similar is appointed over, or an encumbrancer takes possession of, any of the other party's property or assets; the other party enters into an arrangement or composition with its creditors; the other party ceases or threatens to cease to carry on business; the other party becomes insolvent; or the other party ceases to be able to pay its debts as they fall due.

14 EFFECTS OF TERMINATION

14.1 Any termination of a Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party which have arisen on or before the date of termination, nor shall it affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination, including without limitation Clauses 12, 15, 19 and 20.

14.2 Unless a Contract is terminated by Esira pursuant to Clause 14, the Licence to use the Deliverables contained in Clause 9 shall survive any termination of the relevant Contract.

15 LIABILITIES AND INDEMNITIES

- 15.1 All exclusions and limitations in these terms or any Contract shall only apply so far as permitted by law and in particular nothing shall exclude or restrict liability:
- 15.1.1 for death or personal injury resulting from the negligence of a party or its employees acting in the course of their employment, or its agents, acting in the furtherance of their duties;
 - 15.1.2 for fraudulent misrepresentation or other fraud;
 - 15.1.3 for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or
 - 15.1.4 to the extent prohibited by the Consumer Protection Act 1987.
- 15.2 The exclusions and limitations of liability contained in these terms and each Contract shall apply regardless of whether the loss or damage was foreseeable or whether the Customer notifies Esira of the possibility of any greater loss.
- 15.3 Neither party shall in any circumstances be liable to the other for (i) loss of or damage to profits, business, contracts, opportunities, anticipated savings or goodwill or for (ii) any indirect or consequential loss or damage however arising.
- 15.4 Subject to Clause 15.1 and 15.5 the total aggregate liability of one party to the other for any claims arising out of or in connection with these terms, the Contract, the Services and/or the Services, however arising will not exceed 125% of the Price.
- 15.5 Esira shall be responsible for taking out and maintaining in its own name during the continuance of the Contract public liability insurance in the sum of one million pounds per claim or series of claims arising out of the same event(s) or circumstance(s), subject to an overall limit of one million pounds per year. Subject to clause 15.1, any liability Esira may have for claims concerning loss of and/or damage to the physical property of the Customer or its employees arising out of or in connection with these terms, the Contract, the Products and/or the Services however arising, shall not exceed one million pounds per year, nor one million pounds per claim or series of claims arising out of the same event(s) or circumstance(s).
- 15.6 The term "however arising" when used or referred to in this Clause 15 shall cover all causes and actions giving rise to liability of Esira arising out of or in connection with these terms, each Contract, the Services and/or Services (i) whether arising by reason of any misrepresentation (whether made prior to and/or in these terms or a Contract) negligence, breach of statutory duty, other tort, repudiation, renunciation or other breach of contract, restitution or otherwise; (ii) whether arising under any indemnity; (iii) whether caused by any total or partial failure or delay in supply of the Services and/or Services or by any defect in hardware, software or materials; and (iv) whether deliberate (but not with malicious intent) or otherwise, however fundamental the result.
- 15.7 In view of the exclusions and limitations of Esira's liability in these terms, Esira recommends that the Customer considers taking out its own insurance in respect of those risks for which Esira excludes or limits liability. Additionally, the Customer acknowledges that the price of the Services and/or Services provided for under the Contract reflects the exclusions and limitations on Esira's liability as set out in this Clause 15, and that the Customer had the opportunity to negotiate variations to the exclusions and limitations, upon the agreement of a higher price. Accordingly, the parties agree that such exclusions and limitations are reasonable in all the circumstances.
- 15.8 Other than in respect of Clause 15.1, neither party shall have any liability to the other in any respect unless it shall have served notice of the same on the other party within 12 months of the date on which it became aware of the circumstances giving rise to any such claim or the date when it ought reasonably to have become so aware.
- 15.9 Each provision of this Clause 15, limiting or excluding liability, operates separately and shall survive independently of the other provisions.

16 FORCE MAJEURE

- 16.1 Save for the payment obligations in Clause 11, a party (the "affected party") shall not be liable for its failure to perform or the delayed performance of its obligations under the Contract if such failure or delay results from the actions or omissions of the other party (its employees, agents or contractors) or from any circumstances beyond the affected party's reasonable control including but not limited to strikes, lock-outs and labour disputes, acts of God, war, riot, civil commotion, acts of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction not in force on the date of the Contract, accident, fire, flood or severe weather conditions ("Event of Force Majeure")
- 16.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 16.3 If an Event or Force Majeure continues for more than a period of 30 days, either party shall have the right to terminate the Contract, without further liability to the other.

17 PERSONNEL

17.1 Esira shall use all its reasonable endeavours to avoid replacing the personnel assigned to perform the Services during the currency of the Contract. However, in the event of replacement being necessary or desirable, Esira shall use reasonable endeavours to replace such personnel with personnel of commensurate skill and expertise. Nothing in this Clause shall relieve Esira of any of its obligations or its responsibilities for any acts or omissions of its personnel under these terms.

18 ASSIGNMENT AND SUBCONTRACTING

- 18.1 The Customer shall not, nor shall it purport to, assign, transfer or sub contract any of its rights or obligations under the Contract without the prior written consent of Esira, such consent not to be unreasonably withheld or delayed.
- 18.2 Esira shall be entitled to assign the Contract to any Esira Company. The Customer will be informed of any such assignment.
- 18.3 Esira shall be entitled to sub-contract the supply of the Services or the provision of Bespoke Software Development to any third party that it deems is appropriately skilled to provide the same, although Esira shall remain primarily liable to the Customer notwithstanding the use of such subcontractors.

19 CONFIDENTIALITY

19.1 Where a Receiving Party has obtained Confidential Information of a Disclosing Party, the Receiving Party shall:

- 19.1.1 keep the Confidential Information confidential;
- 19.1.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clauses 19.2, 19.3 and 19.4; and
- 19.1.3 not use the Confidential Information for any purpose other than the performance of its obligations under the Contract.
- 19.1.4 During the term of the Contract the Receiving Party may disclose the Confidential Information to its Recipients to the extent that it is necessary for the purposes of the Contract, or any other Contracts between the parties.

19.2 The Receiving Party shall use all reasonable endeavours to ensure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under these terms as if the Recipient were a party hereto.

19.3 The obligations contained in Clauses 19.1 to 19.3 shall not apply to any Confidential Information which:

- 19.3.1 is at the date of the Contract in, or at any time after the date of the Contract comes into, the public domain other than through a breach of these terms by the Receiving Party or any Recipient;
- 19.3.2 can be shown by the Receiving Party to the satisfaction of the Disclosing Party to have been known to the Receiving Party prior to it being disclosed by the Disclosing Party to the Receiving Party; or
- 19.3.3 subsequently comes lawfully into the possession of the Receiving Party from a third party.

19.4 The obligations contained in Clauses 19.1 to 19.3 shall not prevent any disclosure of Confidential Information which is required by law, court order or any legal or regulatory authority, which is required to comply with the rules of any relevant stock exchange, or disclosure to a party's professional advisors, acting in their capacity as such.

19.5 No public announcements concerning the existence or contents of these terms or any Contract shall be made by either party without the prior written consent of the other party.

20 NON-SOLICITATION

- 20.1 During the term of the Contract and for a period of 12 months from its termination neither party will employ or solicit for employment any member of the other's then current personnel connected with the performance of the Contract.
- 20.2 In respect of any breach by either party of Clause 20.1, the other party, in addition to any other remedies available in the Contract or at law, shall be entitled to recover from the party in breach the costs of recruiting and training a replacement for any member of that party's personnel employed or solicited for employment.

21 GENERAL

- 21.1 No variation of these terms or the Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties by a duly authorised officer of each of the parties, provided that, no variation of clauses 8, 10, 12, 15, 16, 21, 22 and 24 of these terms shall be effective unless made in writing and signed by a [director, financial controller or legal counsel] of each of the parties to the Contract.
- 21.2 The failure to exercise or delay in exercising a right or remedy under these terms or the Contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under these terms or the Contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
- 21.3 The invalidity, illegality or unenforceability of any provision of a Contract shall not affect or impact the continuation in force of the remainder of the Contract.
- 21.4 Nothing in a Contract shall be construed as creating a partnership or joint venture of any kind between the parties or as constituting either party as the agent of the other party for any purpose whatsoever and neither party shall have the authority or power to bind the other party, or to contract in the name of, or to create a liability against, the other party in any way or for any purpose.
- 21.5 The parties agree that the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.

22 ENTIRE AGREEMENT

- 22.1 These terms, together with the other agreed terms comprising the Contract and any document expressly referred to in any of its terms, contains the entire agreement between the parties relating to the subject matter covered and supersedes any previous agreements, arrangements, undertakings or proposals, written or oral, between the parties in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms or the Contract.
- 22.2 The Customer confirms that, in entering into each Contract, it has not relied on and shall have no remedy in respect of any statement, representation or warranty that is not set out in these terms or the Contract and agrees that the only remedy available to it for breach of any statement, representation or other term that is expressly set out in these terms or a Contract shall be for breach of contract. Nothing contained in this Clause 22 shall however operate to limit or exclude any liability of Esira for fraud or fraudulent misrepresentation.

23 NOTICES

23.1 Any notice under or in connection with a Contract shall be in writing and shall be either (i) delivered personally or sent by recorded delivery to the address of the party set out in the Contract; or (ii) sent by e-mail or facsimile to the e-mail or facsimile address of the other party normally used for business communications in connection with the Contract; or (iii) sent to any other person or address subsequently notified by one party to the other.

23.2 In the absence of evidence of earlier receipt any notice shall be deemed to be duly given:

23.2.1 if delivered personally when left at the address referred to in Clause 23.1; or

23.2.2 if sent by recorded delivery three (3) days after posting it;

23.2.3 if sent by email or facsimile, when received.

24 GOVERNING LAW

24.1 These terms and the Contract shall be governed by, and construed in accordance with, the laws of Scotland and the Customer agrees to submit to the exclusive jurisdiction of the Scottish courts.