



Memorandum of Understanding

Health Family eCommercial System

Notice:

This document is commercially sensitive and confidential. Any person receiving this document in error must either return it to the Department of Health and Social Care or destroy hard copies and delete electronic copies in their possession.

THIS MEMORANDUM OF UNDERSTANDING (“MoU”) is between the following parties (Parties):

(1) Department of Health and Social Care (Contracting Authority); and

(2) **Enter_Participating_Authority** (Participating Authority),

Background and Policy Context]

- (A) There are significant cost and efficiency benefits to all parties if they select and adopt the same platform on the same terms.
- (B) The Parties shall undertake the Activities in accordance with the terms of this MoU.
- (C) This MoU establishes the responsibilities of the Parties and the general principles for their cooperation.
- (D) This MoU is not intended to be legally binding and no legal obligations or legal rights shall arise between the parties from the provisions of the MoU, however, the Parties enter into the MoU intending to honour all their responsibilities.

NOW THEREFORE the Parties have agreed to cooperate under this MoU as follows:

1. Interpretation

1.1. Unless the context otherwise requires, references to this MoU shall be construed as a reference to this MoU as varied or amended in accordance with its terms. Reference to a person includes a legal entity, words importing a gender include all genders and words importing the singular include the plural and vice versa.

“**Activities**” means the list of activities assigned to each Party and set out in Annex A (Activities) and the on-line version of Appendix B ([Atamis Adoption and Service Management](#)) [Version 1.1](#)).

“**Crown**” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and “Crown Body”. A comprehensive list of Crown bodies can be found in the National Archives, which is updated from time to time.

“**Confidential Information**” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (howsoever it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade and all secrets, personal data and sensitive personal data within the meaning of applicable legislation. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of a duty of confidence by either Party);
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

“Intellectual Property Rights” means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and including, the right to sue for passing off.

“Modules” includes Business Case generation and sign off, Pipeline Management, Procurement and Tendering management including all competition types including Dynamic Purchasing Systems, Contracts Finder, Notice Publication, Procurement Evaluation, Contract signature (via DocuSign), Contract Performance Management, Contract Variation Management, Supplier Relationship Management, Reporting and Dashboards, ability to run D&B checks.

“Principles” has the meaning set out in paragraph 3.1.

“Representatives” means the lead representatives of each Party, as described in paragraph 5 (Liaison between the Parties).

“Supplier” means Atamis Ltd.

“System” means the single eCommercial System comprising the Modules and any additional or replacement modules as agreed from time to time.

“Third Party Supplier” means a provider (other than the Supplier) of software integration / migration services or similar services.

1. Authority Responsibilities:

- 1.2. The Contracting Authority shall perform its Activities.
- 1.3. The Contracting Authority is responsible for payments to the Supplier for all licences and services under its contract with the Supplier which is on the standard NHS terms

of contract (the “**Contract**”) and undertakes to the Participating Authority not to give the Supplier any cause to terminate the Contract.

1.4. The Contracting Authority shall provide a licence to use the System to the Participating Authority for the duration of its requirement to access the System, or until notice is given to terminate under Clause 13 below.

1.5. The licence referred to at 1.4 above will be granted on and from the date on which the Participating Authority signs this MoU and the terms of the licence are set out at Annex C (Licence).

2. Participating Authority Responsibilities

2.1. The Participating Authority shall perform its Activities.

2.2. The Participating Authority shall contribute its proportion of licence and service cost determined in accordance with the arrangements set out in Appendix A and the on-line version of Appendix B ([Atamis Adoption and Service Management](#)) Version 1.1

3. Principles of collaboration and the Parties responsibilities

3.1. The Parties agree to follow the principles set out at paragraph 3.1(a) below (“**Principles**”) at all times during the term of this MoU:

(a) the Parties shall:

- (i) be accountable to each other for performance of their respective roles and responsibilities as set out in this MoU;
- (ii) share, to the extent appropriate in the circumstances, information, experience, materials and skills to learn from each other and develop effective working practices;
- (iii) if reasonably requested to do so, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- (iv) adhere to statutory requirements and best practice (including any relevant Governmental protocols such as the Regulators Code, Ministerial and Civil Service Codes) as well as all applicable laws and standards including data protection and freedom of information legislation.
- (v) act in a timely manner; and
- (vi) ensure sufficient and appropriately qualified employees and other necessary resources are available and (in the case of employees) authorised to fulfil the responsibilities set out in this MoU.

4. Parties Representatives

4.1. Formal contact between Parties to this MoU shall be through their respective Representatives being the persons who have signed this MoU for the relevant Party in the place provided below.

- 4.2. The Representatives are duly authorised to send and receive notices under this MoU via their business email addresses. Notices shall be deemed received when the sender receives notification that the email was delivered.
- 4.3. A Party may change its Representative any time by notifying the other Party in writing.
- 4.4. Each Party's Representative shall:
 - (a) if requested, provide assurance to the other Party that the Activities are being undertaken; and
 - (b) perform the tasks assigned to them under this MoU

5. Charges and liabilities

- 5.1. Except as otherwise provided in this MoU, each Party shall bear its own costs and expenses incurred in complying with its obligations under this MoU.

6. Use of Third Parties:

- 6.1. In the event that the Contracting Authority requires the support of a Third Party supplier to perform software integration / migration services which cannot be performed by the Supplier under the Contract, it will do so on the basis that it does not have available internal resources to offer as a cost effective alternative and, having asked both the Participating Authority and the other participating authorities who have signed an MoU with the Contracting Authority if they have available internal resources to offer as a cost effective alternative, and there is none forthcoming.

7. Intellectual Property Rights

- 7.1. Any Intellectual Property Rights that arise from or are developed by either Party in performing its Activities ("**Foreground IPR**") shall be vested in and owned by the Party creating the Foreground IPR. The Party owning the Foreground IPR and shall grant a licence to the other Party on an "as is" basis to the extent it is necessary for that Party to use the Foreground IPR in order to perform its Activities.

8. Freedom of Information and Communications to the Public

- 8.1. Each Party shall provide any information relevant to the Activities that may be reasonably requested by the other, subject to any confidentiality constraints, safeguards and statutory rules on disclosure. The Parties shall, if reasonably practicable, consult with each other before making to any third party any disclosures of information that is exchanged between the Parties under this MoU, that is requested to be disclosed under the Freedom of Information Act 2000. The Party receiving the request will have absolute discretion in determining whether such information is exempt under FOIA or is to be disclosed to the third party making the request.
- 8.2. The requirements below are subject to any government requirements as to transparency which may apply to any Party from time to time.

- 8.3. Each party shall be responsible for handling its own media inquiries relating to the Activities. Each Party shall seek the other Parties' consent before publishing any Confidential Information of the other Party. Consent shall not be unreasonably withheld and/or delayed.

9. Confidential Information

- 9.1. Each of the Party understands and acknowledges that it may receive or become aware of Confidential Information of other Party (which may include information where the other Party owes a duty of confidence to a third party) whether in the course of the performance of the Activities or otherwise.
- 9.2. Except to the extent set out in this paragraph 9.2 or where disclosure is expressly permitted elsewhere in this MoU, each Party shall treat the other Party's Confidential Information as it would its own confidential information of like kind and safeguard it accordingly (which shall include complying with any protective markings on documents and instructions supplied by any Party). In particular, neither Party shall do anything that may place the other in breach of a duty of confidence owed to a third party.
- 9.3. The obligations of confidentiality in this paragraph 9 (Confidential Information) shall continue in force until the information ceases to meet the definition of Confidential Information.

10. Protection of Personal Data

- 10.1. The Parties shall comply with their responsibilities under the separate Joint Data Controller Agreement.

11. Resolution of disputes:

- 11.1. Any dispute between the Parties arising out of or in connection with this MoU shall in the be resolved amicably between the Parties through the Representatives . In the event the Representatives are unable to resolve the dispute then the matter will be escalated to successive levels of management in their respective organisations until resolution is reached.

12. Term and Termination

- 12.1. This MoU shall commence on the date signed and (subject to earlier termination on the terms of this MoU) shall continue until the expiry date of the Contracting Authority's contract with the Supplier which is 31 May 2026.
- 12.2. The Participating Authority may exit the MOU at any time by giving written notice to the Contracting Authority's Representative.
- 12.3. The Contracting Authority may exit the MoU by giving written notice to the Participating Authority's Representative in accordance with 12.4 below subject to the Participating Authority having previously been given notice from the Contracting Authority that it has materially failed to perform its Activities (for a reason within its control) and has failed

to remedy that failure within a reasonable period relative to the nature of the failure.

12.4. A Party giving notice to exit shall give as much notice as reasonably possible and shall offer all reasonable assistance to ensure, to the extent both necessary and reasonably practicable:

- (a) an effective handover of its Activities, if its Activities are not concluded at the time of termination, and
- (b) that the effect of termination on other Party is mitigated.

13. Financial Consequences of exit from the MoU by a Party

13.1. The Participating Authority will remain liable to pay

- (a) for any changes to the System that it has agreed to fund under its Activities if it terminates the MOU; and
- (b) any unpaid amounts determined in accordance with the arrangements set out in Annex A (Activities) and the on-line version of Appendix B ([Atamis Adoption and Service Management](#)) Version will remain payable by the Participating Authority.

14. Review and audit of the MoU

14.1. The Parties shall review this MoU at least every two (2) years, and whenever substantial changes occur to their policies, external relationships and structures to the extent the same affects their ability to perform their obligations hereunder. Any changes to this MoU shall only be effective if set out in writing and signed by both Parties.

14.2. Records will be kept until six (6) years after termination of this MoU to show full and accurate details of the Activities and sums paid or received in respect thereof. Each Party shall on request afford the requesting Party or their Representatives such access to those records as may reasonably be requested in connection with the MoU or as otherwise required in connection with a Party's audit requirements (including, without limitation, audit by the National Audit Office). Any such access shall be subject to the obligations of confidentiality set out herein.

15. Miscellaneous

15.1. This MoU does not confer any rights on any third party. Nothing in this MoU shall be interpreted as limiting, superseding, or otherwise affecting any Party's normal operations in carrying out its statutory, regulatory or other duties. This MoU does not limit or restrict any Party from participating in similar activities or arrangements with other entities.

15.2. Parties shall have no obligation perform additional activities beyond the Activities unless and until this has been agreed in writing.

Signatories

The duly authorised representatives of the parties affix their signatures below.

Signed for and on behalf of
Department of Health and Social Care

Signature:

Name: Ed James MBE
Position: Deputy Director, Head of Procurement
Commercial Directorate
Date:

Signed for and on behalf of Participating
Authority

Signature:

Name:
Position:
Date:

Annex A. Activities

I. Contracting Authority resources

The Contracting Authority will perform or will procure that the Supplier performs all of the activities that are either its responsibility or that of the Supplier as set out in the Contract and the on-line version of Appendix B ([Atamis Adoption and Service Management](#)) [Version 1.1](#)).

II. Participating Authority funding

The Contracting Authority will arrange for the Participating Authority to be invoiced for the number of users (by licence type) requested to have access to the System by the Participating Authority within 30 days of the date of System Adoption as described in Appendix B (Atamis Adoption and Service Management) Version 1.1 (such date being the Participating Authority's Adoption Date) and on each anniversary of the Participating Authority's Adoption Date. If additional licences are required by the Participating Authority these will be invoiced within 30 days of the date the request was made and the amount payable will be pro rata the annual licence fee to be coterminous with the Participating Authority's Adoption Date .

In advance of the anniversary of the Participating Authority's Adoption Date the Participating Authority may notify the Contracting Authority that it wishes to reduce the number of licences for the coming 12 months. If no reduction is requested before the anniversary of the Participating Authority's Adoption Date the Participating Authority will be liable to pay for the same number of licences that it had in the preceding 12 months.

III. System Adoption

The Participating Authority should follow the arrangements and perform the activities required of it under and the on-line version of Appendix B ([Atamis Adoption and Service Management](#)) [Version 1.1](#) to arrange onboarding to the System.

IV. Exit from the MoU by the Participating Authority

At the Participating Authority's request, the Contracting Authority will provide a file containing all Participating Authority data uploaded onto the System on receipt of the Participating Authority's notice given under Clause 13 of the main body of this MoU, .

V. Contract Management

The Contracting Authority will operate contract management of its Contract in accordance with its terms.

Participating Authority Service – The Participating Authority will be invited to review:

- Service Availability reporting.
- Supplier helpdesk call logs covering supplier and buyer enquiries.
- Supplier Issue log covering material issues with the service.
- Participating Authority onboarding plan.
- Change schedule covering ad hoc changes.

Supplier Monthly Contract Review – The Contracting Authority will ensure that the Supplier meets its contractual obligations under the Contract and will review the contract performance with the Supplier including:

- Service exceptions, where the service is not meeting expectation.
- Change exceptions, where the Contracting Authority changes are not being delivered to time, cost, quality.
- Participating Authority onboarding plan review by exception.
- Financial Review, covering spend against contract and outstanding invoices.
- Risk and Issue review, covering material risks to the service.
- AOB – Other points of interest

Change Management – Changes to the System will be governed through the [Atamis Change and Assurance Board Terms of Reference](#).

VI. Managing Audit rights

The Contracting Authority will request that Government Internal Audit Agency (GIAA) commission audits of the service through the audit schedule of the Contracting Authority. The following will be shared with Participating Authorities where accepted by GIAA:

- Terms of Reference for information and comment.
- Draft and Final audit reports for information and comment.
- Tracking of open issues.

Where GIAA and other Auditors have the legal right to request audits of the system through Participating Authorities, if it is appropriate to do so and accepted by the auditors, the Contracting Authority will request that the Supplier liaises directly with the audit team and the Participating Authority.

VII. Monitoring Supplier accreditation and service resilience

The Authority will track the renewal of annual accreditation and store supporting evidence within the System as further and better described in and the on-line version of Appendix B ([Atamis Adoption and Service Management\) Version 1.1](#) .

The Contracting Authority will advise the Participating Authority of any issue that poses a risk to the System, together with remedial actions that will be taken to resolve it and prevent recurrence all as further set out in the on-line version of Appendix B ([Atamis Adoption and Service Management\) Version 1.1](#) .

VIII. Managing Legacy Systems

Legacy procurement projects will not be migrated into the System which will remain the responsibility of the Participating Authority.

IX. Commercial Data and Generating Business Intelligence

The adoption of the system will enable the Participating Authority to agree (if it chooses to do so) to the arrangements for data sharing in the [Atamis Commercial Data Sharing arrangement](#)

Annex B (Health Family eCommercial System Atamis Adoption and Service Management) version 1.1



Annex C Licence

1. The Contracting Authority grants the Participating Authority a non-exclusive, transferable, perpetual, irrevocable, royalty-free licence to use the System for the Participating Authority's ordinary business activities.
2. The Contracting Authority must obtain the grant of any third-party Intellectual Property Rights so the Participating Authority can enjoy full use of the System including the Participating Authority's right to publish the party Intellectual Property Rights as open source.
3. The Contracting Authority must promptly inform the Participating Authority if it can't comply with the clause above and the Contracting Authority must not use third-party Intellectual Property Rights in relation to the System if it can't obtain the grant of a licence acceptable to the Participating Authority.
4. The Contracting Authority will, on written demand, fully indemnify the Participating Authority for all Losses (as defined at Clause 8 bellow)which it may incur at any time from any claim of infringement or alleged infringement of a third party's Intellectual Property Rights because of the:
 - 4.1 rights granted to the Participating Authority under this MoU;
 - 4.2 Contracting Authority's performance of its Activities; and/or
 - 4.3 use by the Participating Authority of the System
5. If an Intellectual Property Rights Claim is made, or is likely to be made by a third party, the Contracting Authority will immediately notify the Participating Authority in writing and must at its own expense after written approval from the Participating Authority, either procure that the Supplier:

- 5.1 modifies the relevant part of the System without reducing its functionality or performance; or
 - 5.2 substitutes a System of equivalent functionality and performance, to avoid the infringement or the alleged infringement, as long as there is no additional cost or burden to the Participating Authority; or
 - 5.3 buy a licence to use and supply the Services which are the subject of the alleged infringement, on terms acceptable to the Participating Authority.
- 6 Clause 5 will not apply if the party Intellectual Property Rights claim is from:
 - 6.1 the use of data supplied by the Participating Authority which the Contracting Authority isn't required to verify as part of its Activities;
 - 6.2 other material provided by the Participating Authority necessary for the performance of this MoU
7. If the Contracting Authority does not comply with clauses 1 to 6, the Participating Authority may exit the MoU and the Contracting Authority will, on demand, refund the Participating Authority all the money paid for the System.
8. For the purposes of this Annex C Losses means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise.