

## Memorandum of Understanding

### Health Family eCommercial System

**Notice:**

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Document last revised [10 June 2022]

**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 e-commercial system 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. Definitions and 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. Any words following the terms: ‘including’, ‘include’, ‘in particular’, ‘for example’, or any similar expression; shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms. The Annexes to this MoU are incorporated into and form part of this MoU. Reference to legislation or any legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision, and is a reference to such legislation, legislative provision and subordinate legislation as amended, extended or re-enacted from time to time.

1.2. In this MoU the following terms have the following meanings, in addition to terms defined in the head and recitals of the MoU, above, and terms which are defined in-line within the following provisions of this MoU including the Annexes:

“**Activities**” means the list of activities assigned to each Party and set out in Annex A (Activities) and the on-line version of Annex B ([Atamis Adoption and Service Management](#)) [Version 1.6](#) or any later version).

“**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.

“**Commercial System and Data Strategy**” is to implement, govern and embed Commercial Systems and Data Standards that enable commercial experts to drive commercial effectiveness, efficiency, sustainability and resilience.

“**Confidential Information**” means any information which has been designated as confidential by either Party (or by NHSE for Participating Authorities in scope for Third Party Onboarding and Adoption Support) 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 and all trade secrets, and all 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.

“**Contract**” means the commercial agreement and any renewal or replacement contract between the Contracting Authority and the Supplier for the provision of the System.

“**Contracting Authority Records**” means the authority record in the System, which has a range of fields associated to it (including commercial lead, official name, NHS region and ODS codes), that need to be gathered and completed before an organisation’s account can be set-up. Reference to the Contracting Authority Records *in* the System should not be confused with the Contracting Authority *for* the System, which is the Department of Health and Social Care. Each Participating Authority will have one or multiple Contracting Authority Records in the System to undertake their commercial activity.

“**Default FTS/OJEU Address Records**” means the FTS/OJEU record in the System, which has a range of fields associated to it, including address name, postal address, town, postal code, country, NUTS code and main address (URL), that need to be gathered and completed before an organisation’s account can be set-up.

“**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 Commercial Pipeline Management (also known as Workplan), Business Case generation and sign off, Tender management including Dynamic Purchasing Systems, Notice Publication (e.g. FTS and Contracts Finder), Procurement Evaluation, Contract signature (via DocuSign), Contract Performance Management, Contract Variation Management, Supplier Relationship Management, Reporting and Dashboards, ability to run D&B checks.

“**NHSE**” means the NHS England or any successor organisation.

“**Principles**” has the meaning set out in paragraph 7.1.

“**Representatives**” means the lead representatives of each Party, as described in paragraph 8 (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 Onboarding and Adoption Support**” means onboarding, adoption and ongoing support services relating to the Participating Authority’s onboarding and full adoption of the System and monitoring and supplementing of requests submitted to Atamis by or for any licensed users of the System, via the functionality provided by the System for such purpose (the “**Support Ticket Functionality**”) for support services (including incident management) from Atamis in relation to the System (each an “**Atamis Support Service Ticket**”) and Change Suggestion Management for the Participating Authority and its users in relation to the System, where such support services and Change Suggestion Management are provided by any third party organisation.

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

“**Workplan Module**” means the Module called, as at April 2022, Commercial Pipeline Management and also known as Workplan, being a Module to which the Workplan Licence (as such term is defined in the Contract) relates.

## **2. Authority Responsibilities:**

- 2.1 The Contracting Authority shall perform its Activities.
- 2.2 The Contracting Authority is responsible for payments to the Supplier for all licences and services under its contract with the Supplier (which is, at the date of this MoU, on the standard NHS terms of contract (the “**Contract**”, and such term includes any

renewal or replacement contract between the Contracting Authority and the Supplier)) and undertakes to the Participating Authority not to give the Supplier any cause to terminate the Contract.

2.3 The Contracting Authority shall allocate to the Participating Authority and its users (being users nominated by the Participating Authority) licences to use the System from the Adoption Date or NHSE Adoption Date, and shall provide the number of licences to use the System as agreed between the Parties and (if and to the extent that the Contracting Authority or NHSE pays for such licences) the Contracting Authority or NHSE respectively.

2.4 The licences allocated pursuant to paragraph 2.3 shall be:

- (a) for the duration paid for by the Contracting Authority or NHSE or (to the extent that the Participating Authority pays for such licences) the duration of the Participating Authority's requirement to access the System;
- (b) until notice is given to terminate under paragraph 15 below; or
- (c) (where a licence has been re-allocated in accordance with paragraph 3.3) for the unexpired residue of the paid-up term of the re-allocated licence plus the duration of any renewal of such re-allocated licence that is agreed between the Parties and (if and to the extent that the Contracting Authority or NHSE pays for such renewal) the Contracting Authority or NHSE.

2.5 The licences referred to at paragraph 2.3 above will be granted pursuant to the Contracting Authority's rights under the Contract. The Contracting Authority shall inform the Participating Authority in writing to the extent that the Contracting Authority cannot lawfully grant the relevant licences.

2.6 The Contracting Authority shall make available the Contract to the Participating Authority on written request.

2.7 The Contracting Authority agrees to provide the indemnity at Annex C.

### **3. Participating Authority Responsibilities**

3.1. The Participating Authority shall perform its Activities.

3.2. Subject to paragraph 3.3, the Participating Authority shall contribute its proportion of licence and service cost determined in accordance with the applicable arrangements set out in Annex A and the on-line version of Annex B ([Atamis Adoption and Service Management](#)) Version 1.6 or any later version

3.3. Licences allocated to the Participating Authority may be funded by the Contracting Authority or NHSE. Where a licence is funded by the Contracting Authority or NHSE, the Participating Authority shall not be charged by the Contracting Authority or the Supplier for or in connection with the allocation of such licences, or Third Party Onboarding and Adoption Support. The Contracting Authority or (as applicable) NHSE will however, in relation to such licences, reserve the right to re-allocate the licences to

any other organisation on reasonable notice and shall have no obligation to pay or liability in respect of payment for the renewal of such licences on behalf of the Participating Authority.

3.4. Where a licence is funded by the Contracting Authority or NHSE the Participating Authority agrees to ensure:

- (a) Good quality commercial data is input into the system on a timely basis and is regularly maintained;
- (b) The System is used to support procurement policy compliance, for example that organisations use Atamis to publish transparency notices where these are required;
- (c) Selection of standard routes to market where these provide compliant best value for money, including; Crown Commercial Service (CCS), NHS Hubs and NHS Supply Chain.
- (d) Its users of the System accept and use standard data formats, including standard data fields (e.g. Cabinet Office Commercial Pipeline requirements) and standard procurement workflows, where these are available within the System;
- (e) Sharing of limited commercial data. This is usually Pipeline, Procurement and Contract data fields that are already published as part of the government transparency agenda. This information will be used to identify commercial benefits and identify and act on supplier risk;
- (f) A reasonable number of System users are nominated by the Participating Authority, having regard to the fact that the funding from and available to the Contracting Authority and NHSE is finite and shall accommodate a limited number of users (the “**Central Funding**”);
- (g) Any local funding that is available to the Participating Authority and that is freed by the Central Funding shall be used by and for the Participating Authority to support the Commercial Systems and Data Strategy, for example by the Participating Authority undertaking activities to improve data quality in the System; and
- (h) The Participating Authority shall consider co-funding commercial systems and data roles and teams where this is beneficial to the Commercial System and Data Strategy.

3.5. The limited scope of the licence and limited associated rights of use that may be exercised by the Participating Authority and its nominated users of the System shall be as specified, in relation to the particular licence(s) purchased by or for the Participating Authority, in the Contract.

#### 4. IT Support

4.1. The Contracting Authority may provide, at its discretion, additional IT support services, in addition to those provided by the Supplier.

4.2. The Participating Authority agrees to provide such reasonable access and support as required to enable the Contracting Authority (and any third party appointed by the Contracting Authority) to provide the additional IT support services.

## **5. Use of Third Parties**

5.1. In the event that the Contracting Authority requires the support of any Third Party Supplier to perform software integration or 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.

5.2. Paragraph 5.1 does not apply to the extent that the Third Party Supplier is NHSE, or the relevant supplies or services are supplied or provided on behalf of NHSE, specifically in relation to the Onboarding and Adoption of NHS Commissioning Support Units, Clinical Commissioning Groups, Integrated Care Boards (when such exist under United Kingdom law, and including in respect of the related Integrated Care Systems and any parts and participants in such) and NHS Trusts (including NHS Foundation Trusts),.

## **6. Third Party Onboarding and Adoption Support**

6.1. Where the Participating Authority is an NHS Commissioning Support Unit, Clinical Commissioning Group, Integrated Care Board (when such exist under United Kingdom law, and including in respect of the related Integrated Care Systems and any parts and participants in such) and NHS Trusts (including NHS Foundation Trusts), and any owned or affiliated organisations, the Participating Authority agrees that the Contracting Authority may permit NHSE (and that NHSE may permit any of its employees, agents, sub-contractors, contractors and Processors) to establish and access and support organisation Contracting Authority Records, related Default FTS/OJEU Address Records, roles in the System's role hierarchy, and user accounts within the System that the Participating Authority has licence to use, and any data uploaded to or otherwise Processed on or by the System by or for the Participating Authority. This is for the purposes of providing Third Party Onboarding and Adoption Support (e.g. Workplan Module data bulk upload), for NHSE to use in the fulfilment of NHSE's obligations to ensure public transparency requirements and government spend controls are complied with, or in other exercise of NHSE's statutory functions.

6.2. Where the Participating Authority is an NHS Commissioning Support Unit, Clinical Commissioning Group, Integrated Care Board (when such exist under United Kingdom law, and including in respect of the related Integrated Care Systems and any parts and participants in such) and NHS Trusts (including NHS Foundation Trusts), and any owned or affiliated organisations, the Participating Authority agrees that the

Contracting Authority shall appoint NHSE to provide (and NHSE may appoint any of its employees, agents, sub-contractors, contractors or Processors to provide) the Third Party Onboarding and Adoption Support for the Participating Authority and its licensed users.

- 6.3. Other organisations (e.g. Arm's Length Bodies, as public bodies established with a degree of autonomy from the Secretary of State in providing a role in supporting the health and care system) are not in scope of such Third Party Onboarding and Adoption Support.

## **7. Principles of collaboration and the Parties responsibilities**

- 7.1. The Parties agree to follow the principles set out at paragraph 7.1(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.

## **8. Parties Representatives**

- 8.1. 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.

- 8.2. 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.

- 8.3. A Party may change its Representative any time by notifying the other Party in writing.

- 8.4. 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.

## **9. Charges and liabilities**

- 9.1. 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.

## **10. Intellectual Property Rights**

- 10.1. 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 shall grant a licence to the other Party (and, to the extent that the Participating Authority receives Third Party Onboarding and Adoption Support, to each third party organisation that is involved in providing such Third Party Onboarding and Adoption Support) 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.

## **11. Freedom of Information and Communications to the Public**

- 11.1. 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. In addition the Parties shall consult with NHSE in the case of organisations in scope for Third Party Onboarding and Adoption Support (as well as each Party consulting with the other) before making to any third party any disclosures of information that is exchanged between either of the Parties and/or NHSE under or in connection with this MoU, that is intended to be published or requested to be disclosed under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. 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.
- 11.2. The requirements below are subject to any government requirements as to transparency which may apply to any Party from time to time.
- 11.3. Each Party shall be responsible for handling its own media inquiries relating to the Activities. Each Party shall seek the other Parties’ consent (and, to the extent that the request relates to NHSE or information disclosed by it to either party, NHSE’s consent) before publishing any Confidential Information of the other Party (or of or relating to NHSE or any of its employees, agents, contractors, sub-contractors or Processors). Consent shall not be unreasonably withheld and/or delayed.

## **12. Confidential Information**

- 12.1. Each 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.
- 12.2. Except to the extent set out in this paragraph 12.2 or where disclosure is expressly permitted elsewhere in this MoU, each Party shall treat the other Party's Confidential Information (and Confidential Information of or relating to NHSE or any of its employees, agents, contractors, sub-contractors or Processors) 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 or NHSE in breach of a duty of confidence owed to a third party.
- 12.3. The obligations of confidentiality in this paragraph 12 (Confidential Information) shall continue in force until the information ceases to meet the definition of Confidential Information.

### **13. Protection of Personal Data**

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

### **14. Resolution of disputes**

- 14.1. Any dispute between the Parties arising out of or in connection with this MoU shall 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.

### **15. Term and Termination**

- 15.1. 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 Contract which, as at 1 April 2022, is 08 May 2026.
- 15.2. The Participating Authority may exit the MOU, or any licence, at any time by giving written notice to the Contracting Authority's Representative.
- 15.3. The Contracting Authority may exit the MoU by giving written notice to the Participating Authority's Representative in accordance with paragraph 15.4 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.
- 15.4. 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.

## **16. Financial Consequences of exit from the MoU by a Party**

16.1. The Participating Authority will remain liable to pay, if applicable:

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

16.2. If the Contracting Authority fails to comply with the requirements of Annex C and the MoU and all licences are consequently terminated, it shall immediately refund the Participating Authority all the money paid for the System.

## **17. Review and audit of the MoU**

17.1. 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.

17.2. 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.

## **18. Miscellaneous**

18.1. This MoU is intended to be binding on the parties but does not (except where expressly stated or required by necessary implication) 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.

18.2. Parties shall have no obligation to 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:

A handwritten signature in black ink, appearing to read 'TCox', with a stylized flourish at the end.

Name:

Tom Cox

Position:

Procurement Business Intelligence  
and Systems Manager  
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 ensure 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 Annex B ([Atamis Adoption and Service Management Version 1.6](#)).

### **II. Funding**

#### **Participating Authority funding**

Where the Participating Authority is funding a licence itself (or by any other source or means of funding apart from NHSE or the Contracting Authority) the Contracting Authority will arrange for the Participating Authority (or relevant third party other than NHSE or the Contracting 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 Annex B (Atamis Adoption and Service Management) Version 1.6 or any later version (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 responsible and liable to pay for the same number of licences that it had in the preceding 12 months.

#### **Contracting Authority or NHSE payment for licence(s)**

Where the Contracting Authority or NHSE pays for a licence, the Contracting Authority will not invoice (or suffer or permit any invoice to be issued to) the Participating Authority for the number of users paid for by the Contracting Authority or NHSE (by licence type that is paid for by NHSE or the Contracting Authority) to have access to and use of the System, and the licence(s) shall commence on the date on which the onboarding and adoption of the Participating Authority into the System, by means of the Third Party Onboarding and Adoption Support, is completed ("**NHSE Adoption Date**").

If additional licences are required by the Participating Authority and the Contracting Authority or NHSE agrees to pay for such additional licences, the Contracting Authority will not invoice (or suffer or permit any invoice to be issued to) the Participating Authority, but if the Contracting Authority or NHSE does not agree so to pay, the licence fees will be invoiced to the Participating Authority within 30 days of the date the request was made and amount payable by the

Participating Authority.

In advance of the anniversary of the Participating Authority's NHSE Adoption Date the Participating Authority may notify the Contracting Authority (and NHSE, if and to the extent that NHSE agrees to pay for the renewal of any of the Participating Authority's licences) 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 NHSE Adoption Date the Participating Authority will be responsible and liable to pay (unless and to the extent that the Contracting Authority or NHSE agrees to pay for the renewal) for the same number of licences that it had in the preceding 12 months.

### III. System Adoption

#### Adoption funded by the Participating Authority (other than by NHSE or the Contracting Authority)

The Participating Authority shall:

1. follow the arrangements and perform the activities required of it under the on-line version of Annex B ([Atamis Adoption and Service Management](#)) [Version 1.6](#) to arrange onboarding to the System; and
2. follow guidance as provided by NHSE on the [Workplan module adoption](#).

#### Adoption funded by the Contracting Authority or NHSE

The Contracting Authority shall, and hereby does, appoint NHSE for onboarding the Participating Authority (in common with other NHS Trusts, Clinical Commissioning Groups, Integrated Care Boards (when such exist under United Kingdom law, and including in respect of the related Integrated Care Systems and any parts and participants in such) and Commissioning Support Units) to, and the Participating Authority shall cooperate with NHSE (and NHSE's employees, agents, contractors, sub-contractors and Processors) to, achieve completion of the onboarding and adoption of the Participating Authority and its users into the System, by means of Third Party Onboarding and Adoption Support.

### IV. Exit from the MoU by the Participating Authority

The Participating Authority will be able to run reports from the System to extract all their metadata for migration to another system. At the Participating Authority's request, the Contracting Authority can request a file from the Supplier containing all Participating Authority data uploaded onto or Processed on or by the System on receipt of the Participating Authority's notice given under paragraph 155 of the main body of this MoU. This may come at a charge to the Participating Authority if this Exit is before the Contract end date.

### V. Contract Management

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

**Participating Authority Service** – The Participating Authority may request and review:

- Service availability reporting.
- Supplier helpdesk logs covering supplier and buyer enquiries relating to their users.
- Supplier issue log and development roadmap covering material issues with the service.
- Participating Authority onboarding and adoption plan (where the Participating Authority pays for its initial licences, and they commence on the Adoption Date).
- Change schedule covering ad hoc changes (specifically available to Participating Authority super users).

**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 expectations.
- Change exceptions, where the Contracting Authority changes are not being delivered to time, cost, and/or quality.
- Participating Authority onboarding and adoption plan review by exception (where the Participating Authority pays for its initial licences, and they commence on the Adoption Date).
- 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 in accordance with such Board's Terms of Reference](#). Where the Participating Authority is an NHS Commissioning Support Unit, Clinical Commissioning Group, Integrated Care Board (when such exist under United Kingdom law, and including in respect of the related Integrated Care Systems and any parts and participants in such) and NHS Trusts (including NHS Foundation Trusts), including any affiliated or owned organisations, the Participating Authority shall submit change proposals or other feedback to NHSE for NHSE to present to the Contracting Authority (the “**Change Suggestion Management**”).

#### 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. Where Auditors request an audit via a Participating Authority, the

Participating Authority has a duty to inform the Contracting Authority of this in order to circulate system-related audit findings (where relevant and non-confidential) and improve System usage and functionality.

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 the on-line version of Annex B ([Atamis Adoption and Service Management](#)) Version 1.6.

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 as further set out in the on-line version of Annex B ([Atamis Adoption and Service Management](#)) Version 1.6.

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 1.6

## Annex C

1. The Contracting Authority will, on written demand, fully indemnify the Participating Authority for all Losses (as defined at Clause 4 below) 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 or its users of the System,(each such claim, an "**Intellectual Property Rights Claim**").
2. If any Intellectual Property Rights Claim is made, or is likely to be made by any 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 all relevant items, rights and things which are the subject of the alleged infringement, on terms acceptable to the Participating Authority.
3. Clause 1 will not apply if and to the extent that the relevant Intellectual Property Rights Claim arises from:
  - 6.1 the use of data supplied by the Participating Authority which the Contracting Authority is not required to verify as part of its Activities;
  - 6.2 other material provided by the Participating Authority and necessary for the performance of this MoU.
4. 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.