



# 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 (Authority)
- (2) **Enter Participating Authority** (Participating Authority), that elects to use the eCommercial System ,as listed within the Authorities contract with Atamis (Supplier) for use of the single eCommercial System (System).

### **Background and Policy Context**

- (A) Historically, the Parties have selected and implemented eCommercial systems independently of each other.
- (B) There are significant cost and efficiency benefits to all Parties selecting and adopting the same platform under the same licencing agreement. The benefits are detailed within the supporting Business Case.
- (C) Agreement of this MoU by the Participating Authority and payment for licences will result in the Authority enabling the Participating Authority to access the system
- (D) All Parties shall undertake the Activities in accordance with the terms of this MoU.
- (E) This MoU establishes the responsibilities of the Parties and the general principles for their cooperation.
- (F) 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. The Parties enter into the MoU intending to honour all their obligations.

**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 set out in Annex A (Activities).

“**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, rights in confidence, know-how, 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.

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

**“Providers”** means any supplier organisation that provides the software platform to the parties.

**“Representatives”** means the lead representatives of each Party, as described in paragraph 4 (Liaison between the Parties). The authorised representatives and addresses for service of notices are as set out in the Commercial Technology and Data Forum Membership.

## **2. Authority Responsibilities:**

- 2.1. The Authority shall perform the Activities described in Annex A (Activities).
- 2.2. The Authority is responsible for payments for all licences and services to the Supplier.
- 2.3. The Authority shall provide licences to the application to the Participating Authority for the duration of their requirement to access the system, or until such notice is given to terminate, see 13 below.

## **3. Participating Authority Responsibilities**

3.1. The Participating Authority shall perform the Activities described in Annex A (Activities).

3.2. The Participating Authority shall agree to contribute their proportion of licence and service cost perform the Activities described in Annex A (Activities).

#### **4. Principles of collaboration and the Parties' responsibilities**

4.1. 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 appropriate information, experience, materials and skills to learn from each other and develop effective working practices,

(iii) 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 EU procurement rules, data protection and freedom of information legislation.

(v) act in a timely manner;

(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.

#### **5. Liaison between the Parties**

5.1. Formal contact between Parties to this MoU shall be through the Representatives.

5.2. The Representatives are duly authorised to send and receive notices under this MoU through CTDF (Commercial Technology and Data Forum) membership email addresses.

5.3. Parties may change the Representative any time by notifying the other Parties in writing.

5.4. The Representatives shall:

(a) meet periodically at a time and place to be mutually agreed to review the Activities carried out under, and the operation of, this MoU and to address any issues arising from this MoU. , meetings will be scheduled to coincide with Participating Authority System service review meetings.

(b) provide assurance to the Parties that the Activities agreed between the Parties are being undertaken and that work is proceeding in accordance with

the Principles; and

- (c) document key decisions in writing.

## **6. Charges and liabilities**

- 6.1. 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.

## **7. Use of Third Parties:**

- 7.1. In the event that the Contracting Authority requires the support of a Third Party supplier (software integration / migration providers and such), they will do so on the basis that The Parties do not have available internal resources to offer as a cost effective alternative.

## **8. Intellectual Property Rights**

- 8.1. Any Intellectual Property Rights that arise from or are developed by either Party in performing this MoU (“**Foreground IPR**”) shall be vested in and owned by the Crown.
- 8.2. Parties shall work together to ensure that in the performance of the Activities and use of any Foreground IPR they do not infringe any Intellectual Property Rights belonging to a third party. Where use of Intellectual Property Rights belonging to a third party is required to perform the Activities or to use any Foreground IPR, the Partner shall use reasonable efforts to secure licences for Parties to use any such Intellectual Property Rights on a royalty-free, non-exclusive basis. Where this is not possible, the Parties shall agree other means to enable the performance of the Activities and use of Foreground IPR without infringing such rights, which may include modification of the Activities to avoid infringement of any such third party rights.

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

- 9.1. 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. Each Party shall consult with other Parties before making to any third party any disclosures of information under the Freedom of Information Act 2000. The disclosing party should have absolute discretion in determining whether such information is exempt under FOIA and is to be disclosed to the third party making the request.
- 9.2. The requirements below are subject to any government requirements as to transparency which may apply to any Party from time to time.
- 9.3. 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 information resulting from the use of exchanged data received from the other Party. Consent shall not be unreasonably withheld and/or delayed.

## **10. Confidential Information**

- 10.1. Each of the Parties understands and acknowledges that it may receive or become aware of Confidential Information of other Parties (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.
- 10.2. 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 confidential and safeguard it accordingly (which shall include complying with any protective markings on documents and instructions supplied by any Party). In particular, no Party shall do anything that may place the other in breach of a duty of confidence owed to a third party. A Party in receipt of Confidential Information from another Party shall not disclose such Confidential Information to any non-Crown Body without the consent of the other Parties.
- 10.3. The obligations of confidentiality in this paragraph 9 (Confidential Information) shall continue in force until the information ceases to be confidential in nature.

## **11. Protection of Personal Data**

- 11.1. The Parties shall comply with their responsibilities under the General Data Protection Regulations (Regulation (EU)2016/679) and shall not use any personal data exchanged under this MoU for any purposes which are incompatible with applicable data protection laws and regulations. No Personal data collated and/or exchanged under this MoU should be used for commercial purposes without the prior written agreement of the supplying Party (which use may be conditioned as the supplying Party sees fit).
- 11.2. Each Party must ensure that personal data under this MoU is not transferred outside the EEA/UK without the prior agreement of the other.

## **12. Resolution of disputes:**

- 12.1. Any dispute between the Parties arising out of or in connection with this MoU shall in the first instance be resolved amicably between the Parties through the Representatives and, if no resolution is reached, escalated to the Strategic Commercial Steering Group (SCSG) for the health family.

## **13. Term and Termination**

- 13.1. 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 Authorities contract with the Supplier. The period may be extended by the mutual written agreement of the Parties.

- 13.2. The Authority will initiate activity to implement the Service, only on receipt of the signed MOU from the Participating Authority.
- 13.3. A Participating Authority may exit the MOU at any time by giving written notice to the other Party's Representatives as set out in the Commercial Technology and Data Forum Membership.
- 13.4. A Party exiting this MoU shall give as much notice as reasonably possible and shall offer all reasonable assistance to ensure:
- (a) an effective handover of Activities, if the Activities are not concluded at the time of termination, and
  - (b) to mitigate the effect of termination on other Parties by fully co-operating with the other Parties in order to achieve an effective transition without disruption to operational requirements.

**14. Financial Consequences of exit from the MoU by an individual Party**

- 14.1. The Participating Authority will be liable for any licence costs that have been committed to within that financial year. They will also be liable for any changes that they have requested and have authorised if they terminate the MOU
- 14.2. Licence subscriptions will remain payable by the Participating Authority until the next annual licence renewal date after they exit the MOU. At that point, their licences will be deactivated.

**15. Review and audit of the MoU**

- 15.1. In addition to the periodic review meetings to discuss performance in accordance with paragraph 5.4, the Parties shall review this MoU at least every two (2) years, and whenever substantial changes occur to the policies, external relationships and structures of the Parties concerned. Any changes to this MoU shall only be effective if set out in writing and signed by both Parties.
- 15.2. Records will be kept until six (6) years after termination of this MoU to show full and accurate details of the Activities and sums received in respect thereof. Each Party shall on request afford the requesting Party or their Representatives such access to those records as may be requested in connection with the MoU or as otherwise required in connection with audit requirements (including, without limitation, audit by the National Audit Office).

**16. Miscellaneous**

- 16.1. 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.

16.2. Parties shall have no obligation to incur any further fees under this MoU, nor shall the other Parties be required to perform additional Activities unless and until this has been agreed in writing.

16.3. This MoU shall be governed by and construed in accordance with English law. Each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

**17. MOU Agreement**

17.1. Agreement to participate within this MOU will be through Participating Authority request to the Authority that they wish to adopt the System.

**18. 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
Position:	Deputy Director, Head of Procurement Commercial Directorate

Signed for and on behalf of Participating  
Authority

Signature:

Name:  
Position:  
Date:



## **Annex A. Activities**

### **I. Authority resources**

The Authority will provide the following capability to support Contract Management and Service Delivery:

- Project Management resource to support system adoption, on the basis that the Participating Authority allocates their own project management resource to plan, communicate, co-ordinate and own the implementation on behalf of the Participating Authority.
- Contract Management resource to co-ordinate and manage the contract with the Supplier as described in Contract Management below.

### **II. Supplier Payments**

The Authority will arrange payment for licences as Participating Authorities onboard to the live system. To ensure that all licences are coterminus, the Authority will pro-rata licence payments to the next anniversary of system “Activation”, the date that the first licences were activated within the system.

### **III. Participating Authority funding**

The Authority will arrange for the Participating Authority to be invoiced as new licences are required by the Participating Authority.. From that point onwards, licence renewal payments will be requested one month in advance of the anniversary of system Activation. The Participating Authority should pay the invoice in advance of the licence being allocated by the Authority.

Ahead of the annual renewal date, the Participating Authority may confirm that they wish to reduce the number of licences held for the next licencing period. If no reduction is requested before the annual renewal date the Participating Authority will be liable for the cost as indicated within the invoice.

The Participating Authority may request additional licences at anytime, the Authority will arrange for an invoice to be generated on a prorata basis where licences are required “in year”, before the next annual renewal date.

### **IV. System Adoption**

A generic system adoption plan will be provided by the supplier for the Participating Authority to follow as they adopt the system. This will cover user set up, training, workflow configuration, meta data configuration and reporting. The Participating Authority may develop the plan to suit their needs. Where consultation with the Authority and/or the Supplier results in development away from the standard system that was signed off at implementation, if it is possible to do so, the Participating Authority may agree to fund that development – see Change Management below.

## V. System Exit

**At Participating Authority request** – The supplier is contracted to provide a dataset of all activity/objects within the system at the Authorities request. In this case, the supplier will be asked to provide a dataset that covers that Participating Authority only. The Participating Authority will use that dataset to bulk load required data into their new system.

Alternatively, the Participating Authority may request remaining “Read Only” licences on the system to enable them to refer to data as required.

**At Contract termination/end** – In the event that the Contract is terminated, or that the contract expires, the Authority will offer to arrange a replacement project, with Participating authority super users invited to identify, select and implement a replacement system. The new supplier will be required to include data export, transformation and load into their system as part of their contact arrangements.

## VI. Contract Management

As contracting authority, the Authority will operate contract management of the contract in line with the Authorities Commercial Contract Management toolkit. Contract Performance will be tracked and recorded within the Systems Contract Performance Management module. Access will be granted to all Participating Authorities with active onboarding plans or active licences.

**Participating Authority Monthly Service Review** – All Participating Authorities with active onboarding plans or active licences will be invited to review:

- Service Availability and Service Response times reports, as indicated by monitoring software.
- 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 adhoc changes.
- AOB – Other points of interest

**Supplier Monthly Contract Review** – The Authority will review the contract performance with the supplier

- Service exceptions, where the service is not meeting expectation.
- Change exceptions, where the supplier 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** – All Participating Authorities will be invited to attend a quarterly change review to review changes and enhancements that have been suggested to improve adoption of the system. Chair will be on a rotating volunteer basis, a supplier representative will be invited to attend and overview potential new features and to understand proposed enhancements.

Where it is possible to do so, changes will be implemented by Participating Authority super users to minimise service costs. Where changes require application development, the supplier will be asked to consider the merits of the development and implement it free of charge through its system enhancement process. Where timescales or uniqueness (ie. Only a single or group of Participating Authorities will benefit) mean that the supplier is unable to add the change to its enhancement schedule, the change group will either agree that the requesting Participating Authority, or all Participating Authorities fund the development on a case by case basis.

#### VII. Incident Management and Escalation

The Authority will act as the single point of supplier contact in the event of a significant incident occurring that impacts on the service. The Authority will agree resolution activity on a case by case basis. This may include routine email updates to super users or all system users, conference calls with Participating Authorities and supplier representatives, or arranging direct engagement between the Supplier and Participating Authorities that are suffering significant disruption because of the incident.

Participating Authorities should contact the supplier helpdesk directly regarding issues that impact their service. Where they feel that an issue merits incident management, they should also contact the Authority who will proactively review the issue and organise incident management with the Supplier.

On resolution of the incident, the Authority will request a root cause analysis report from the Supplier that set out the impact of the incident and the remedial actions that were taken to recover the service and prevent future recurrence.

#### VIII. Managing Audit rights

The Authority will request that Government Internal Audit Agency (GIAA) commission audits of the service through the audit schedule of the 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 request audits of the system through Participating Authorities, if it is appropriate to do so, the Authority will request that the Supplier liaises directly with the audit team and Participating Authority.

#### IX. Monitoring supplier accreditation and service resilience

The Authority will track the renewal of annual accreditation and store supporting evidence within the System.

The authority will request evidence of the suppliers CyberSecurity regime and store evidence

within the System.

The Authority will advise Participating Authorities of any issue that poses a risk for the service, together with remedial actions that will be taken to resolve it and prevent recurrence.

X. Data Sharing agreement

The Authority, Participating Authorities and Supplier will agree and sign a data sharing agreement that is inline with the related contract schedule and provides assurance to the Participating Authority that personal data held in the system will be managed appropriately.

XI. Managing Legacy Systems

Legacy procurement activity will not be migrated into the Single eCommerce System. The Participating Authority will retain accountability for managing legacy systems.

The Supplier will be asked to provide capability to import existing/legacy Contract information into the System.

XII. Commerical Data and Generating Business Intelligence

The adoption of the system will enable commercial Business Intelligence to be generated in a standard format from standard metadata fields within the system.

All Parties will agree standard data fields that fulfil Cabinet Office data reporting requirements to enable the Authority to report to GCF and Cabinet Office. They may also specify their own specific fields to meet reporting requirements for their organisation.