

**THIS AGREEMENT is dated the                      day of**

**BETWEEN:**

- (1) **adam** HTTP Limited (trading as **adam**), a company incorporated in England and Wales, having its registered office is at 249 Midsummer Boulevard, Milton Keynes, MK9 1EA under registered company number: 07718565 (the “**Service Provider**”).
  
- (2) (“**Customer**”).

**WHEREAS:**

- A. The Customer wishes to purchase the Services.
  
- B. The Service Provider having been awarded Supplier status under a Framework Agreement with the Crown Commercial Service, the ‘Framework Agreement’ and the Call – Off Agreement with the Customer, will supply the Services in accordance with their obligations to the Customer.

**NOW IT IS HEREBY AGREED** as follows:

- A. The Service Provider has created and owns the rights of a proprietary, web – based services procurement solution, SProc.Net (the "Technology"), that can enable and support a user to procure services and directly contract with suppliers.
  
- B. The Service Provider also provides a series of services, which includes the licence of and support of the Technology to facilitate and, where possible, automate the services procurement process. The Service Provider also provides services to support the overall commissioning process and being client record management, service user portal, supplier relationship management, contract management and real time call monitoring.

- C. The Customer wishes to engage the Service Provider to licence the Technology and provide such services as detailed in this Agreement.
- D. The Service Provider agrees to Supply the Services in accordance with the Framework Agreement, the Call – Off Agreement, including Service Provider’s own terms and conditions.
- E. In the event of and only to the extent of any conflict or ambiguity between the Clauses of the Call –Off Agreement, the provision of the Schedules, any document referred to the Clauses of the Call – Off Agreement (including Service Provider’s Terms and Conditions) and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
  - (a) the Framework Agreement (excluding Framework Schedule 2)
  - (b) the clauses of the Call – Off Agreement (excluding Service Provider’s Terms)
  - (c) the completed Order Form
  - (d) the Collaboration Agreement (Framework Schedule 7)
  - (e) the Service Provider’s Terms and Conditions.
  - (f) any other document referred to in the Clauses of the Call – Off Agreement.

## **OPERATIVE PROVISIONS:**

### **Part 1 - Preliminary**

#### **1. Definitions and Interpretations.**

1.1 In the Agreement unless the context otherwise requires the following terms shall have the meanings given to them below.

1.2 In the Agreement except where the context otherwise requires:

- (a) the terms and expressions set out in clause 1.3 shall have the meanings ascribed therein;
- (b) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (c) words importing the masculine include the feminine and the neuter;
- (d) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of

whatever kind and however constituted and their successors and permitted assignees or transferees;

- (g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
- (h) headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

1.3 In the Agreement, the following expressions shall be defined as follows:

“Agreement” means signed between the Customer and the Service Provider consisting of these clauses and any attached Schedules.

“Approval” means approval in writing.

“Agreement Period” means the period from the Commencement Date to the date of expiry set out in this Agreement or such earlier date of termination or partial termination of the Agreement in accordance with the provisions of the Agreement.

“Call – Off Agreement” means the agreement between the Customer and the Service Provider.

“Commencement Date” means the date set out in the Order Form.

“Contract Manager” means the Customer’s nominated representative to manage the performance of this Agreement.

“Contracting Authority” means any contracting Authority as defined in the Public Contracts Regulations 2015 (as maybe amended from time to time).

“Customer” means the customer identified in the Order Form.

“Data Processor” has the meaning given to it in the Data Protection Legislation, as amended from time to time.

“Data Protection Legislation” or “DPA” means the Data Protection Act 1998 as long as it remains in force, the General Data Protection Regulations 2016 (Regulation (EU) 2016/679), the Data Protection Act 2018 as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

“Data Subject” has the meaning given to it in the Data Protection Legislation, as amended from time to time;

“Data Subject Access Request” means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;

“Default” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other.

“Framework Agreement” means the agreement between the Service Provider and the Crown Commercial Service.

“Intellectual Property Rights” and “IPRs” means patents, inventions, trademarks, service marks, logos, design rights (whether registerable 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 registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Key Personnel” means any Staff that is dedicated solely to the provision of Services to the Customer under this Agreement. These individuals should be named where reasonably possible.

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Bodies.

"Malicious Software" means any program code and programming instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect software, data files, equipment or operations.

“Party” means the Service Provider or the Customer.

“Pre-Existing IPR” means any Intellectual Property Rights vested in or licensed to the Customer or the Service Provider prior to or independently of the performance by the Customer or the Service Provider of their obligations under this Contract and in respect of the Customer includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs.

“Premises” means the location where the Services are to be supplied, as set out in the Order Form.

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer.

“Requirement” means each specific request for Services made by the Client via the Technology; “Services” means the provision of the Technology to enable the Customer to procure services and such other services as specified in this Agreement.

“Service Provider’s Fee” means the fee payable to the Service Provider as detailed in the *adam* SProc.Net Pricing Document.

“Service Provider’s Representative” means the Service Provider’s nominated contact point in the provision of Services in accordance with this Agreement.

“Service Specification” means the itemized Services required by the Client as set out in Schedule 1.

“Service User” means any manager within a department at the Customer who uses the Services under this Agreement.

“Staff” means all persons employed by the Service Provider whether providing the Services or not.

“Suppliers” means the providers of services procured by the Customer through the Technology.

“Technology” means the proprietary web-based software owned and operated by the Service Provider, currently called SProc.Net, or such other technology as agreed between the Parties.

## **2. Scope of Agreement**

2.1 The Service Provider shall provide the Services to the Customer as listed in Schedule 1 of this Agreement.

2.2 Nothing in the Agreement shall be construed as creating a partnership or an Agreement of employment between the Customer and the Service Provider.

### **Service Provider’s Status**

2.3 This Agreement is entered into by the Customer and the Service Provider on the understanding and agreement that the Service Provider shall be authorised by the Customer to:

- (a) negotiate the accreditation and enrolment of the Customer's Suppliers onto the Technology; and
  - (b) to process invoices and payments in respect of any Suppliers' services as it sees fit and how to assist and facilitate such transactions, in accordance with the terms of this Agreement.
- 2.4 In addition to clause 3.1 the Service Provider shall provide the Services to the Customer.
- 2.5 The Customer shall enter a contract directly with their Suppliers through the Technology, as the principal contracting party and shall be responsible for the performance and observance of such agreed terms at all times.
- 2.6 As agent of the Customer, the Service Provider shall have no liability to any of the Suppliers for any claim for breach of contracts, negligence, misrepresentation or any other legal cause of action save as specified in this Agreement.
- 2.7 The Service Provider shall solely determine the process and manner of exercising its authorisations under clause 3.1 above and as agent of the Customer, the Service Provider shall have no liability to any of the Customers for any breach of contract, negligence, misrepresentation or any other legal cause of action save as expressly specified in this Agreement.
- 2.8 The Customer acknowledges that, throughout the provision of the Services, the Service Provider will act as the payment agent of the Customer and will be responsible for processing invoices and payments in respect of the Supplier's services in accordance with this Agreement.



### **3. Customer's Obligations.**

Save as otherwise expressly provided, the obligations of the Customer under the Agreement are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Customer to the Service Provider.

## **Part 2 – The Provision of the Services**

### **4. Supply of Services**

- 4.1 The Service Provider shall supply the Services during the Agreement Period in accordance with the Customer's requirements as set out in the Agreement in consideration for the payment of the Service Provider's Fees. The Customer may inspect and examine the manner in which the Service Provider supplies the Services at the Premises during normal business hours on reasonable notice.
- 4.2 The Service Provider shall at all times deliver the Services in accordance with the Law.
- 4.3 In the event that the Customer notifies the Service Provider of the Customer's reasonably held opinion that any part of the Services do not meet the requirements of this Agreement or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Customer, the Service Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Customer.

- 4.4 The Service Provider shall not provide the Services or any part of the Services without obtaining the Customer's prior approval in writing.

## **5. Standard of Work**

- 5.1 The Service Provider shall at all times comply with the quality standards, and where applicable shall maintain accreditation with the relevant quality standards authorisation body. To the extent the standard of Services has not been specified in the Agreement, the Service Provider shall agree the relevant standard of Services with the Contract Manager prior to the delivery of the Services, and the Service Provider shall undertake its obligations in accordance with good industry practice.
- 5.2 The introduction of new methods or systems which adversely affect the provision of the Services shall be subject to the prior approval of the Customer.

## **6. Grant and use of Licensed Software/Technology**

- 6.1 The Service Provider grants the Customer a non – exclusive licence for the duration provided for in the Agreement to access, use display and perform the Licensed Software in accordance with the terms and conditions set forth within the Agreement, for which the Customer agrees to pay the Service Provider's Fees.
- 6.2 The Service Provider shall provide support, maintenance and upgrade services as detailed in Clause 7 and Schedule 2.
- 6.3 The Customer shall neither directly nor indirectly (i) copy all or any portion of the Licensed Software, (ii) modify or change the Licensed Software, (iii) sub-licence, transfer, loan, rent, grant access to any other person or entity, except as otherwise stated in the Agreement, (iv) use the Licensed Software not according to the terms and conditions of the Agreement or contrary to any documentation following the Licensed Software, (v) engineer, remove or

destroy any part of the Licensed Software or any proprietary markings or proprietary legends placed upon or contained with the Licensed Software.

## **7. Ownership of Licensed Software/Technology**

- 7.1 The Licensed Software and all other Intellectual Property Rights associated with the Licensed Software provided by the Service Provider shall be and remain the property of the Service Provider.
- 7.2 Save as granted elsewhere under this Agreement, neither the Customer or the Service Provider shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.
- 7.3 Each Party shall inform the other of any infringement of any Intellectual Property Rights as soon as reasonably practicable upon such infringement coming to its notice. The Party that is the owner of such Intellectual Property Rights shall have the sole conduct of any proceedings in relation to them.

## **8. Malicious Software and Disabling Code**

- 8.1 The Service Provider shall use commercially reasonable efforts to ensure that no Malicious Software is coded or introduced into Licensed Software or any other software supplied or made available by the Service Provider.
- 8.2 Without prejudice to Clause 9.1, Service Provider shall regularly check for, and use commercially reasonable efforts to delete, Malicious Software in any Licensed Software and other software supplied or made available by the Service Provider.

## **9. PROTECTION OF INFORMATION**

### **9.1 Data Protection**

Where any Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under The Agreement, the Parties acknowledge that the Customer is the Data Controller and that the Service Provider is the Data Processor.

### **9.2 The Service Provider shall:**

- a) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under the Agreement;
- b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
- c) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Agreement)
- d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
  - i. are aware of and comply with the Supplier's duties under the Agreement;

- ii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
  - iii. have undergone adequate training in the use, care, protection and handling of Personal Data (as defined in the DPA);
- e) take reasonable steps to ensure the reliability and integrity of any Personnel who have access to the Personal Data and ensure that the Personnel:
  - i. from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Customer's obligations under the DPA;
  - ii. any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - iii. a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by them) in relation to any complaint, communication or request made (as referred to at Clause 6.1.2(e)) including by promptly providing:

- i. the Customer with full details and copies of the complaint, communication or request;
  - ii. where applicable, such assistance as is reasonably requested by the Customer to enable them to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
  - iii. the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
- g) if requested by the Customer, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to Clause 6.1.2 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

9.3 The Service Provider shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Call Off Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country outside the European Economic Area, the following provisions shall apply:

- a) the Service Provider shall propose a Variation to the Customer which, if it is agreed by them, shall be dealt with in accordance with the Variation Procedure;
- b) the Service Provider shall set out in its proposal to the Customer for a Variation details of the following:
  - i. the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
  - ii. the Restricted Countries to which the Personal Data will be transferred and/or Processed; and

- iii. any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
  - iv. how the Service Provider will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer's compliance with the DPA;
- c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- d) the Service Provider shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
  - i. incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call Off Contract or a separate data processing agreement between the Parties; and
  - ii. procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:

(1) a direct data processing agreement with the Customer on such terms as may be required by them; or

(2) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Customer and the Sub-Contractor relating to the relevant Personal Data transfer, and

iii. in each case which the Service Provider acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

9.4 The Service Provider shall use its reasonable endeavours to assist the Customer to comply with any obligations under the DPA and shall not perform its obligations under this Call Off Contract in such a way as to cause the Customer to breach any of their obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

9.5 The Service Provider shall designate a data protection officer if required by the Data Protection Legislation.

9.6 Before allowing any Sub-Processor to process any Personal Data related to this Contract, the Service Provider shall:

a) notify the Customer in writing of the intended Sub-Processor and processing;



- b) obtain the written consent of the Customer;
- c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 6.1 such that they apply to the Sub-Processor; and provide the Customer with such information regarding the Sub-Processor as they may reasonably require.

The Service Provider shall remain fully liable for all acts or omissions of any Sub-Processor.

## **10. Notices**

- 10.1 Except as otherwise expressly provided within the Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party sending the communication.
- 10.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party as set out in Clause 10.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

10.3 For the purposes of Clause 10.2, the address of each Party shall be:

(i) for the Customer:

Name. ...

Address. ....

Tel...

Fax...

Email:.....

(ii) for the Service Provider:-

Name. ...

Address. ....

Tel...

Fax...

Email:.....

10.4 Either Party may change its address for service by serving a notice in accordance with this clause.

10.5 The Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the jurisdiction of the English courts.

AGREED by the parties through their duly authorised signatories on the date set out at the head of this Agreement.

Signed for and on behalf

of .....

..... Authorised Signatory

..... Name

..... Post

Signed for and on behalf of

*adam* HTT Limited (TA *adam*)

..... Authorised Signatory

..... Name

..... Post

## SCHEDULE 1

### Service Specification

#### **1. Category Development System (SProc.Net)**

The adam Category Development system is an online platform that manages the end to-end commissioning processes for any category of spend. Sitting between council wide systems, the commissioning of any service is typically carried out by a number of sperate silo databases, or through manual work. The adam Category Development System (CDS) supports the commissioning process by putting in place a digital platform that not only digitises the core function, but also supports both supplier and service user interaction in the commissioning process.

The CDS includes three core systems within a single Digital Platform – SProc.Net, Case Management System and Service User Portal – which are all fully and seamlessly integrated and incorporate key processes and functions. These separate elements can be implemented in one or implemented separately (see individual GCloud services).

#### **2. Implementation**

The implementation of SProc.Net will take between 10 - 16 weeks depending on the size and scope of the category of spend to be implementation (e.g. area of spend, customer user numbers, supplier numbers) and the scope of the solution being implemented. All customers will be provided with a dedicated implementation project team during this period. Implementation will commence under the terms of a project charter. The *adam* project manager will meet with the customer's project manager weekly in order to review progress against the implementation plan.

#### **3. SProc.Net**

- Supplier Relationship Management (SRM) - a tool which allows customers to better manage their own supply chains
- Ava a tool which allows service users to procure their services using their own personal budgets.– a tool which allows accurate monitoring of carer attendance
- Client Record Management (CMS) – a tool to manage client / patient case data
- Supplier credit checking tool

#### **4. Professional Support Services**

*adam's* offers clients a range of different professional services which are designed to help support our clients with change management.

#### **5. Supplier Engagement**

*adam's* Supplier Engagement team will assume responsibility for supplier change management. During the implementation of SProc.Net the team will be responsible for:

- Undertaking all supplier briefing and training sessions
- Assisting suppliers with the accreditation process, in order to help them gain entry into the supply chain
- Sourcing new suppliers

Post go live, should customers wish the team to continue to provide the above services then this service will be chargeable.

## 6. Account Management

*adam's* Account Management team will assume responsibility for the day to day management of the contract including but not limited to:

- Responsibility for working with client and supplier users to minimise delays in the end-to-end commissioning/procurement process
  - Including calling and emailing users as appropriate
  - Creation of reports on a monthly basis to highlight users, suppliers, types of service etc. where delays are most common
- Close monitoring of measures of success and taking necessary actions to achieve targets on each and every transaction
  - Including calling and emailing users as appropriate
- Management and reporting of process exceptions where standard process has not been followed
- Creation and delivery of monthly management information, including performance against the measures of success

## 7. Training

During implementation, *adam* will undertake all client user and supplier training, however, post go live, any additional training required by client users and/or suppliers will be undertaken at an additional cost to the Customer. Training will either be delivered onsite at each customers premises or off-site via webinar

## SCHEDULE 2

### Technical Support and Maintenance/ Service Level Agreement

#### **Service and Operating Level Agreements**

##### **1.1 Servers and Hardware**

##### **Network Availability – Servers and Hardware:**

Technical Support: The Service Provider shall provide technical support of the system-level software, including the operating system, database server, reporting server and application server and any bespoke developments or extensions

Application Support: The Service Provider shall provide application support of the Licensed Software and Services, including ensuring the Licensed Software function at all times in accordance with the Functional Specification and any software modifications (including interfaces), answering all questions about functionality, resolving defects (bugs). The Supplier shall also maintain and upgrade servers with patches, performance and security updates, and hardware updates. All such support shall be provided in accordance with the service level agreement below

##### **a) Uptime**

The Supplier shall have systems fully operable at a minimum of 99.5% of the time per month excluding scheduled downtime for upgrades, operating system patches or other required updates.

##### **b) Scheduled Downtime**

The Supplier shall provide reasonable notice to the Client and the Customer, as applicable, of any scheduled downtime for upgrade or maintenance. Scheduled

downtime shall be performed after 8:00 p.m. and before midnight on Thursdays. Scheduled downtime shall be performed in less than 2 hours unless extraordinary circumstances occur.

### **Backups:**

The following additional backup procedures are in place outside of the replication to further enhance data continuity levels.

- Transaction Log backups of all production user databases taken every 15 minutes and stored locally on the server before being copied to secondary data centre.
- Daily Full Database backups of all production user databases stored locally on the server and before being copied to secondary data centre.
- Weekly Full Database backups of all system databases stored on the server before being copied to secondary data centre.
- Full Database backups of all production user databases taken prior to any software releases.

## **1.2 Maintenance and Technical Support**

Maintenance includes that of the Products and databases, ensuring that:

- databases are regularly cleaned;
- databases are checked for integrity;
- patches are provided as required;
- upgrades for the Products are introduced as required;
- operating systems upgrades are introduced as required;
- operating systems patches are introduced as required;
- maintenance of links is undertaken as required.

## **1.3 Exceptions**

Designed service levels shall not apply to outages occasioned by:



- DoS attack on more than one transit route;
- malicious acts of a third party;
- failures caused by late patch availability, which can not be prevented;
- failures caused by abnormal operation of the service or servers;
- outages due to actions by an employee or agent of the Client;
- circumstances outside our control that cannot reasonably be prevented;
- substantial failures of the Internet infrastructure beyond our peering points;
- failures by any central or regulatory body;
- changes required by any central or regulatory body or the Client;
- the improper use operation or neglect of the Licensed Program;
- the modification of the Licensed Program or its merger (in whole or in part) with any other software without the prior approval of Supplier;
- the failure by the Client to implement recommendations in respect of or solutions to faults previously advised by Supplier;
- any repair adjustment alteration or modification of the Licensed Program by any person other than Supplier without Supplier's prior written consent;
- the use of the Licensed Program for a purpose for which it was not designed;
- failure of any third-party system to provide data required by the Products to function correctly;
- failure of the connection to any third-party system providing data required by the Products to function correctly.

#### **1.4 Contact and Fault Reporting**

The Supplier shall support the Licensed Software and Services with:

- a) First line support (e.g. a system administrator and 24/7 support cover)
- b) Second line support (e.g. routine fixes, scheduled site maintenance, corrections)

Access to a member of the Supplier's team will be available 24/7/365.

The Client shall designate three (3) authorised contacts within their organisation and/or Customer, each of which be permitted to report issues and receive support from the Supplier. All issues shall be logged through the Licensed Software or otherwise confirmed in writing to the designated contact only within the Supplier.

### **1.5 Contact**

The contact for the purposes of fault reporting for either servers or the Products (the 'Contact') shall be the Supplier's System Administrator Team.

Both the Client and the Customer shall also have the ability to log issues via the issue logging system. This would usually accommodate the lower priority issues (e.g. Priority 4 in the service level agreement below)

### **1.6 Service Level Agreement**

On submission of an issue to the Supplier, the Parties shall assign the issue with a priority level in accordance with the description set out in the table below.

The Supplier shall respond to the Client or the Customer, as appropriate, within the timeframes set out in this clause 3 and shall update the Client and/or the Customer on the progress of resolution as defined in the table below.

The Supplier shall endeavour to resolve a Priority 1 issue within the shortest possible timeframe and shall commit all available resource to the same.

The Supplier shall endeavour to resolve Priority 2, 3 and 4 issues within the shortest possible timeframe and shall commit reasonable resource to the same.

<b>Priority</b>	<b>Priority Description</b>	<b>Time to respond to Customer</b>	<b>Frequency of updates to Customer</b>
Priority 1	The Licensed Software is 'down' and inaccessible or major components of the Licensed Software are not operational and work cannot continue without impacting on business critical delivery	Within 15 minutes	Every 30 minutes
Priority 2	Operation of the Licensed Software is severely degraded, or non-business critical components of the service are not operational and work cannot reasonably continue	Within 1 hour	Every 2 hours
Priority 3	Certain non-essential features of the Service are impaired while most major components of the Service remain functional	Within 1 business days after initial response or as otherwise agreed.	Every 1 week
Priority 4	Cosmetic or other low priority queries	Within 7 business days after initial response or as otherwise agreed.	Every 4 weeks

## **Data Migration**

### **Service Entry Process**

Data migration requirements are scoped and planned during the implementation process. SProc.Net supports script-based iMacros imports of data into each of its object areas, using a spreadsheet-based format. Import data templates are drafted and circulated during the implementation to capture and validate data before loading into our test system, which is later presented to the client for sign-off as part of the formal User Acceptance Testing procedure. The most common data migration exercise our clients undertake is the import of existing service package contracts ("Current Service Agreements") into SProc.Net before the Go Live, in order for all transactions to be managed and transacted in one place post-launch. As above, this uses a standard spreadsheet-based import template which will include the service information, start and end dates, cost centre codes, agreed prices and units, client transaction owners and approvers, intermission (i.e. non-billable) dates, and so on, depending on the client's specific system configuration.

### **Service Exit Process**

#### **Exit Process**

##### **1. Provision of notice**

1.1. The Customer shall provide the Technology Provider with three (3) months written notice of its intention for the Agreement to expire or terminate, or to discontinue its use of the Technology and/or Services.

1.2. Where the Customer is unable to provide such written notice as outlined in clause 1.1 or to formally extend its provision of the Technology and Services with the Technology Provider, then the Technology Provider shall continue to provide its Technology and Services to the Customer at a pro rata cost until such time as the

Customer has provided the Technology Provider with the requisite three (3) months' notice as per clause 1.1. The Customer shall pay the Technology Provider

## **2. Transition Period**

2.1. The three (3) months prior to the expiry or termination of the Agreement shall be a "Transition Period", whereby the Parties shall collaborate to extract the Technology Provider and its Services and Technology from the Customer's operations.

2.2. Where the Customer requires the Transition Period to be extended to enable the Customer to access the Technology Provider's Services and/or Technology beyond the date of expiry or termination of the Agreement, the Customer shall provide written notice to the Technology Provider and the Parties shall execute an appropriate extension to the Agreement. The applicable terms of the Agreement shall remain in effect during any such additional period (the "Extension Period").

2.3. Where the Customer requests an Extension Period as per clause 2.2. above, the Customer shall be charged a fee by the Technology Provider for the applicable Extension Period which shall be calculated as a pro rata sum of the licence fee which would otherwise be chargeable where licence fee is fixed, or a proportionate fee based on the reasonable fee proportionate to the average spend through the Technology for the preceding six (6) months period. The Technology Provider reserves the right to increase the fee proportionate to any additional costs the Technology Provider may incur for providing the Extension Period. The fee shall be received by the Technology Provider in cleared funds prior to the commencement of the applicable Extension Period.

## **3. Data Deletion**

3.1. The parties agree that on the termination or expiry of the Agreement, the Technology Provider shall at the choice of the Customer, return the Customer's data to the Customer in line with clause 4.1. or shall destroy all data and certify to the

Customer that it has done so, unless required to retain such data for maintaining financial records, statutory or regulatory compliance within six (6) months.

#### **4. Data Portability and Return of Data**

4.1. Where written notice has been received from the Customer as per clause 1.1., the Technology Provider shall provide the Customer with a complete extract of all appropriate data from the Technology no later than three (3) months after the expiry or termination of the Agreement. The data shall be delivered via an encrypted file, based on extracting the data into a SQL server database format. The Parties acknowledge and accept that all data provided into the Technology constitutes data that has been loaded into SProc.Net by the Customer or their suppliers, and so the Technology Provider is unable to provide any warranty regarding the quality or accuracy of the data returned to the Customer. All data must be processed by the Parties in accordance with the applicable data protection laws of England and Wales during the time of transfer. For the avoidance of doubt, the Technology Provider shall retain a copy of all transactional data relating to the Agreement for the purposes of maintaining financial records and for applicable statutory and regulatory compliance audits.

#### **5. Exit Plan**

5.1. Upon receipt of notice as per clause 1.1 above, the Parties shall each appoint an authorised representative to co-ordinate and communicate their respective Party's duties during the Transition Period and Extension Period, (if applicable).

5.2. The authorised representatives shall mutually agree in writing an "Exit Plan" no later than two (2) months prior to the expiry of termination of the Agreement which shall include but not be limited to: applicable timetable, roles, manner of communications; mechanism for transfer of data; transfer of responsibilities and any applicable fees. Fees may apply where the Customer requires services beyond the scope of clause 3.1. and 4.1 above.

5.3. The Parties shall ensure that the timetable included within the Exit Plan considers the cancellation and closure of:

- a. Accreditation and Enrolment
- b. Requirements
- c. Offers
- d. Service Agreements
- e. Service Receipts
- f. Invoicing and payment dates to providers

5.4. For the avoidance of doubt, the Technology Provider shall not disable or deactivate providers accounts or restrict providers access to the Technology as providers may utilise the Technology for their own business operations.

## **6. Continuity of Services**

6.1. The Technology Provider shall not knowingly or purposely obstruct the ability of the Customer to ensure an orderly transfer of responsibility for service provision.

6.2. The Technology Provider acknowledges on termination or expiry of this Agreement for any reason, the continuity of the Service Agreements is of paramount importance. The Technology Provider shall make reasonable endeavours to minimise disruption caused by the expiry of the Agreement and assist in the implementation of the agreed Exit Plan proposed by the Customer to deal with the effects of such termination or expiry in so far as it is practicable to do so.

6.3. The Technology Provider agrees that if upon termination of this Framework Agreement, circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended are applicable, the Technology Provider shall in good faith co-operate with the Customer in the disclosure of information and the provision of other assistance so as to facilitate such outcome in relation to the

relevant employees as may be acceptable to the Parties. The Technology Provider shall comply with the requirements of those Regulations in respect any personnel who will have been employed in the undertaking, or a relevant part of the undertaking, immediately before its transfer to the Technology Provider

## **7. Transition Services**

7.1. The Customer may request assistance relating to information necessary to enable the Customer to issue tender documents for the future provision of procurement technology services. The Technology Provider reserves the right to refuse to offer the additional assistance. Such assistance may include, (without limitation) delivery of documents and data in the possession or control of the Technology Provider which relate to performance, monitoring, management and reporting of the Services, including the documents and data, if any, which the Technology Provider may otherwise be obliged to disclose under this Agreement. The Technology Provider reserves the right to charge the Customer on a time and material basis for such assistance and the Customer shall reimburse the Technology Provider for any reasonable expenses incurred in providing such requested assistance. The Parties shall agree the extent of the requested assistance and if the activity shall be chargeable in writing prior to commencement.

7.2. The Customer shall take all necessary precautions to ensure that the information referred to in this Agreement and/or as provided in connection with assistance requested under clause 7.1., is given only to potential providers who have qualified to tender or have been successful in being selected as the new provider following a tender exercise for the future provision of procurement technology services. The Customer shall require that such potentials providers shall treat that information in confidence; that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Customer; and that they



shall not use it for any other purpose. For the avoidance, all confidentiality provisions relating to the Technology Provider (including, but not limited to, its business methodologies, Technology functionality, contacts, contracts and suppliers) shall continue after the expiry or termination of the Agreement, on the terms set out therein, and as applicable under this clause 7.2.

## **8. Data Migration and Transfer**

8.1. The Customer may request assistance relating to transfer or migration of data in addition to the exit services provide by the Technology Provider under clause 4.1 above. The Technology Provider is under no obligation to provide such assistance. Assistance may include, (without limitation) extracting to another format; additional data extracts; accelerated timetable and assisting with migration to another service provider. The Technology Provider shall charge the Customer on a time and material basis for such assistance and the Customer shall reimburse the Technology Provider for any reasonable expenses incurred in providing such requested assistance. The Parties shall agree the scope of the requested assistance and applicable charges in writing prior to commencement.

8.2. For the avoidance of doubt, the Technology Provider shall not be under any obligation to provide the Customer with copies of its proprietary information, including but not limited to information pertaining to the structure of the Technology and the database schema. on an encrypted disc to the authorised recipient. The format of such data can however be negotiated at the time of exit. *adam* recognises that they must create bespoke exit plan with Customer, as per the terms of the contract. *adam* would suggest in the first instance that the exit plan commences, no later than 30 days prior to the conclusion of the contract.