PRO-FORMA CONTRACT

(1) [insert customer name] and

(2) ARKIVUM LIMITED

PRO FORMA SERVICES CONTRACT

THIS CONTRACT is dated

BETWEEN:

(1) **[INSERT NAME OF CUSTOMER]** (Company Number [ ]) whose [registered office] [principal place of business] is at [insert address]("**the Customer")**; and

(2) **ARKIVUM LIMITED** (Company Number 7530353) whose registered office is at 24 Cornhill, London, EC3V 3ND ("**the Contractor**").

1. **DEFINITIONS**

1.1 In this Contract, the following words will have the following meanings:

"Bribery Legislation"	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the Bribery Legislation;
"Business Day"	means any day excluding Saturdays, Sundays and any national holidays throughout the United Kingdom;
"Commercially Sensitive Information"	means the subset of Confidential Information listed in Schedule 3 that constitutes a trade secret;
"Confidential Information"	means all information (in whatever format) designated as such by the disclosing Party together with such information which relates to the business, affairs, networks, customers, products, developments, trade secrets, know-how and personnel of the disclosing Party or which may reasonably be regarded as the confidential information of the disclosing Party and, in the case of information disclosed by the Contractor, includes the Commercially Sensitive Information;
"Contract"	means this contract including the Schedules;
"Data"	means all data and information of the Customer which is hosted or stored on the Contractor's infrastructure and any other data and information belonging to the Customer which may be

	delivered to, or generated by, or otherwise come into the possession or control of, the Contractor including any associated set of data (such as log files and statistics) that are derived from the systems of the Customer or the systems and infrastructure of the Contractor;
"Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and **"processing"**	have the respective meanings given to them in the DPA;
"Data Management Plan"	means a plan agreed by the Parties detailing the tasks to be performed by the Contractor on the Data from time to time as part of the Services;
"DPA"	means the Data Protection Act 1998 and the rules and regulations made or having effect under it;
"Effective Date"	means [the date of this Contract];
"Environmental Information Regulations"	means the Environmental Information Regulations 2004;
"Fix"	means a permanent resolution of an Incident;
"FOIA"	means the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002 (as applicable) and any subordinate legislation made under these Acts from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
"Force Majeure Event"	means any cause beyond a Party's reasonable control affecting the performance of its obligations under this Contract, including war, acts of terrorism, governmental requirements, acts of local or central Government or other competent authorities, Acts of God and industrial disputes (other than industrial disputes by the relevant Party's employees). For the avoidance of doubt, the failure or delay of any obligations of any

	subcontractor will not be deemed to be beyond the reasonable control of a Party unless the delay or failure is a result of an event beyond the reasonable control of the subcontractor;
"Framework Agreement"	means the framework agreement between (1) Jisc Collections and Janet Limited; and (2) the Contractor dated [INSERT];
"Good Industry Practice"	means in relation to any undertaking and any circumstances, the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or an internationally recognised company engaged in the same type of activity under the same or similar circumstances;
"Group"	means, in relation to a Party, the Party, its subsidiaries, its holding companies and any subsidiaries of such holding companies, "subsidiary" and "holding company" having the meanings given to them in section 1159 of the Companies Act 2006;
"Hardware"	means the hardware to be provided pursuant to the terms of this Contract;
"Implementation Date"	means the date on or by which the Contractor must have provided access to the Services, as detailed in Schedule 1;
"Incident"	means any event that is not part of the standard operation of the hardware or software used to provide the Services and that causes, an interruption to, or a reduction in the functionality of such hardware or software or degradation in resilience of such hardware or software;
"Information"	means information recorded in any form;
"Information Security Plan"	means the information security plan prepared by the Contractor pursuant to Clause 10.7;
"Intellectual Property	means all present or future intellectual property rights, patents, patent applications, copyright,

Rights"	mask works, trade secrets and industrial property rights in respect of any designs, formulas, technical information and software, and any trademark, trademark applications, service marks and trade names, and other similar rights and obligations whether they are registerable or not;
"Jisc"	means Jisc (co. number 05747339) (or any successor body thereto);
["Payment Plan"	means the plan for the call off by the Contractor of Prices paid by the Customer in advance and held by the Contractor in escrow as set out at Schedule 1;] [**Drafting Note:** delete if not applicable]
"Prices"	means the prices or fees payable by the Customer to the Contractor in consideration for the performance of the Services, as set out in Schedule 1, as may be revised from time to time in accordance with the terms of this Contract;
"Requests for Information"	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;
"Resolution"	means either a Fix or a Workaround that has been applied;
"Response"	means confirmation by the Contractor that it has recorded (i) the date and time of the call which notifies the Incident; (ii) the nature and location of the Incident; and (iii) the severity level assigned to the Incident;
"Secure Access Control Measures"	means the measures employed by the Contractor to ensure that Data is only accessed by those who are entitled to access that Data as set out in Schedule 4;
"Services"	means the services described in Schedule 1, including the Storage Services and the Support Services (in each case as defined in Schedule 1), which are to be provided to the Customer by the Contractor;
"Service Credits"	means the credits (if any) which become payable to the Customer where the Service Levels are not

	achieved as set out in Schedule 1;
"Service Levels"	means the service levels set out in Appendix 3 of Schedule 1;
"Seventh Data Protection Principle"	means the seventh data protection principle set out in Schedule 1 of the DPA;
"Software"	means any standalone software supplied pursuant to the terms of this Contract;
"Specifications"	means the specifications for the Software and Hardware to be supplied by the Contractor as set out in Schedule 1;
"Term"	means the term of this Contract as set out in Clause 14;
"**Workaround**"	means a temporary fix which restores the resilience and functionality of the Hardware or Software until a Fix is available.

1.2 References in this Contract to any statute or statutory provision include, unless the context otherwise requires, references to that statute or provision as from time to time amended, extended or re-enacted.

1.3 References in this Contract to a "Party" or the "Parties" mean a party or the parties to this Contract.

1.4 Reference to words importing the singular only also includes the plural and vice versa where the context requires.

1.5 The headings in this Contract are for reference only and shall not be taken into account in the construction or interpretation of this Contract.

1.6 Unless otherwise stated, references in this Contract to Clauses, Schedules, Parts and Appendices are references to the clauses or schedules of, or appendices or parts to a schedule of, this Contract or the Framework Agreement as applicable.

1.7 any words introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression shall be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms

1.8 The terms of the Framework Agreement are hereby incorporated into the terms of this Contract provided that the following order of precedence shall apply in relation to any

conflict, inconsistency or contradiction between the various documents referred to in this Contract:

1.8.1 the terms and conditions in the main body of this Contract;

1.8.2 the Schedules and Appendices to this Contract;

1.8.3 the Framework Agreement; and

1.8.4 the Schedules to the Framework Agreement.

2. THE SERVICES

2.1 In consideration for the payment of the Prices, the Contractor shall provide the Services in accordance with the terms of this Contract, including the Service Levels and the timescales for performance set out in Schedule 1 and the Secure Access Control Measures.

2.2 Where Service Credits are specified in Schedule 1 to be payable, Service Credits shall be due by the Contractor and recoverable by the Customer in accordance with the provisions of Schedule 1 and without prejudice to any other rights and remedies available to the Customer under this Contract or otherwise.

2.3 The Parties each acknowledge and agree that any Service Credits payable under Schedule 1 are a price adjustment to reflect the reduced level of Service and are not an estimate of the loss or damage that may be suffered by the Customer as a result of a failure to meet the relevant Service Level. Payment of a Service Credit by the Contractor or the fact that a Service Credit is due by the Contractor, is without prejudice to, and will not limit, any right the Customer may have to damages or non-monetary remedies at law or in equity resulting from, or otherwise arising in respect of, a failure to achieve a Service Level (including any rights of termination).

2.4 In performing its obligations under this Contract, the Contractor will at all times exercise reasonable skill and care and will ensure that the Services are performed by staff that are competent and skilled and experienced in the relevant subject areas.

2.5 The Parties may at any time during the Term agree a Data Management Plan which will apply to the Contractor's performance of the Services.

3. INTELLECTUAL PROPERTY RIGHTS

3.1 The Contractor shall ensure that, for the duration of this Contract, it will maintain all licences and consents necessary to enable it to provide the Services and in particular shall ensure that its provision of the Services does not infringe the Intellectual Property Rights of any third party and, where necessary, it grants and/or shall procure for the benefit of the Customer within the United Kingdom any licences necessary to enable the Customer to receive the Services without infringing the Intellectual Property Rights of any third party.

3.2 The Contractor shall indemnify and keep indemnified the Customer against any direct losses, liabilities, costs, claims, damages, awards and expenses arising out of any claims

that the Services (or any part of the Services, including the use of a deliverable) infringe the Intellectual Property Rights of whatever nature of a third party.

3.3 The Customer shall notify the Contractor promptly if the Customer becomes aware of any claim being made or action being threatened or brought against the Customer, which is likely to result in an indemnity claim against the Contractor pursuant to Clause 3.2.

3.4 The Customer shall:

3.4.1 not make any admissions or settlement of any claim of the kind referred to in Clause 3.2 without the Contractor's prior written consent (such consent not to be unreasonably withhold and/or delayed);

3.4.2 give the Contractor all such reasonable assistance and information as it may reasonably require in order to respond to any claim of the kind described in Clause 3.2; and

3.4.3 at the Contractor's cost and expense, allow the Contractor complete control over the defence and/or settlement of any action or claim of the kind described in Clause 3.2.

3.5 The Contractor shall give the Customer the earliest possible notice in writing of any actual claims against the Contractor that the Services (or any part of them) infringe the Intellectual Property Rights of whatever nature of a third party.

3.6 Without prejudice to the provisions of Clause 3.2, if a third party brings a claim that the Services (or any part of them) infringes any Intellectual Property Rights of that third party, of if the Contractor reasonably considers that such a claim may be made, the Contractor may (at its own option and expense):

3.6.1 modify or replace the infringing element of the Services so as to avoid the infringement provided that such modification or replacement shall not materially affect the delivery of the Services, with the Contractor making good to the Customer any direct losses suffered by the Customer during or as a result of the modification or replacement; or

3.6.2 procure for the Customer the right to retain and continue to use the affected article.

3.7 If the Contractor modifies or replaces the infringing element, the modified/replacement item must comply with the terms of this Contract, including any warranties and any specifications.

3.8 The Contractor shall have no liability to indemnify the Customer other against any claim of the kind referred to in Clause 3.2 to the extent that any such claim is in respect of: (i) any use in combination with the Services of any item not supplied by the Contractor (except where such combination, connection, operation or use is recommended, specified or approved by the Contractor) where such combined use directly gives rise to the claim; or (ii) the Customer's unreasonable refusal to use modified Services provided pursuant to Clause 3.6.1.

4. CHANGE PROCESS

4.1 Except as set out in this Clause 4, all changes to this Contract will be agreed in writing between the Parties and set out in the Contractor's service order form ("Order Form"). The Services will be provided by the Contractor to the Customer on the terms of this Contract. An example of the Order Form is attached at Schedule 2.

4.2 If there is any conflict between the terms of the Order Form and the terms of this Contract, the terms of this Contract shall prevail unless the parties expressly state to the contrary within the Order Form.

4.3 If a minor change to the Services is proposed by one of the Parties, the change will come into effect if both Parties agree to that change in writing.

5. PRICES

5.1 The Prices to be paid by the Customer for the Services and the payment profile that will apply are set out in Schedule 1.

5.2 [All invoices validly issued by the Contractor shall be payable by the Customer within 30 days of the date of a valid invoice.] [**Drafting Note:** to be updated, if required, following agreement of charging structure with Contractor.]

5.3 [Any of the Prices which are paid by the Customer in advance shall be held by the Contractor in a suitable escrow account and called off in accordance with the Payment Plan.] [**Drafting Note:** to be updated, if required, following agreement of charging structure with Contractor.]

5.4 All sums payable under this Contract are exclusive of VAT, which shall be charged in accordance with the relevant regulations in force at the time of making the relevant taxable supply and will be payable by the Customer.

6. PROGRESS MEETINGS

6.1 The Parties agree to meet as often as is reasonably necessary to facilitate the operation of this Contract and the proper and timely delivery of the Services, such meetings to be the forum for discussion between the Parties in connection with such operation and delivery.

6.2 The Parties will arrange for certain of its employees, agents or subcontractors to attend from time to time as may be appropriate.

6.3 Progress meetings to discuss progress reports and other relevant issues will be held at intervals which, in the Customer's reasonable opinion, are necessary to ensure the proper and timely delivery of the Services.

6.4 The Contractor will prepare in advance of each such meeting a written progress report, the contents of which shall be as the Customer may reasonably require.

6.5 The meetings will be held at the Customer's offices, or at any other location agreed between the Parties.

7. WARRANTIES

7.1 The Contractor warrants that:

7.1.1 it will at all times have adequate levels of resource to allow the performance of the Services in accordance with the terms of this Contract, including the timescales for performance;

7.1.2 it has and will for the duration of this Contract have all necessary licences, consents and authorisations or rights as may be provided for under any relevant legislation, regulations or administrative orders to provide the Services to the Customer;

7.1.3 the Services will (where relevant) meet or exceed the Service Levels set out in Schedule 1 and any applicable industry standards (including ISO 27001 or its replacement from time to time);

7.1.4 it will provide the Services in a timely, reliable and professional manner and will carry out its obligations in this Contract in accordance with all applicable telecommunications, data protection and other laws, licences and regulations in force from time to time;

7.1.5 the Hardware and Software comply with the Specifications;

7.1.6 it has the full right, power and authority to enter into and perform this Contract in accordance with its terms, and such entry and performance does not and will not violate or infringe the Intellectual Property Rights or other rights of any other persons; and

7.1.7 it is not knowingly engaged in, and will not knowingly during the Term engage in, any business, relationship, contract or other activity which damages or tarnishes, or is likely to damage or tarnish, the reputation of the Customer;

7.1.8 in relation to this Contract and/or its subject matter, neither the Contractor nor any of its employees, sub-contractors or agents or others performing services on behalf of the Contractor has done (or agreed to do) or will do (or agree to do) anything which constitutes a breach by the Parties of any Bribery Legislation;

7.1.9 it has in place, and will at all times during the Term continue to have in place, adequate procedures designed to prevent any person associated with the Contractor from committing an offence under the Bribery Legislation and as a minimum such procedures comply, and will at all times during the Term comply, with the most recent guidance issued from time to time by the Secretary of State pursuant to the Bribery Act 2010; and

7.1.10 it will throughout the Term comply with, monitor and enforce the procedures referred to in Clause 7.1.8.

7.2 The Customer warrants that:

7.2.1 it has and will for the duration of this Contract have all necessary licences, consents and authorisations or rights as may be provided for under any relevant

legislation, regulations or administrative orders required to perform its obligations under this Contract; and

7.2.2 it has the full right, power and authority to enter into and perform this Contract in accordance with its terms, and such entry and performance does not and will not violate or infringe the Intellectual Property Rights or other rights of any other persons.

7.3 Specific warranties regarding any Services to be provided by the Contractor (including in relation to any software) are set out in the relevant Appendix of Parts 1 to 5 in Schedule 1.

8. CONFIDENTIALITY

8.1 Subject to the following provisions of this Clause, each Party shall treat as confidential the Confidential Information of the other Party.

8.2 Subject to Clauses 8.3, 8.4 and 8.5, each Party will:

8.2.1 only use Confidential Information for the purposes of this Contract or the Framework Agreement;

8.2.2 only disclose Confidential Information to a third party with the prior written consent of the other Party (except that each Party may disclose Confidential Information to companies in its Group or to its professional advisors or auditors to the extent necessary to exercise its rights or fulfil its obligations under this Contract); and

8.2.3 ensure that any third party to whom Confidential Information is disclosed is subject to a confidentiality undertaking in terms no less onerous than those of this Clause.

8.3 The provisions of Clause 8.1 will not apply to any Confidential Information which:

8.3.1 is in or comes into the public domain other than by breach of this Clause 8; or

8.3.2 a Party can show (i) has been independently generated by the recipient Party's employees who have neither had any involvement in the performance of the recipient Party's obligations under this Contract nor access to such Confidential Information or (ii) was in the possession of the recipient Party prior to the date of the disclosure, free from any obligations of confidentiality.

8.4 The Customer may disclose the Confidential Information of the Contractor to the relevant Funding Councils and the Jisc and in relation to any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.

8.5 Each Party may disclose the Confidential Information of the other Party pursuant to a statutory, legal or parliamentary obligation, an order of a court of competent jurisdiction or the requirement of a competent regulatory body, including any requirements for disclosure under the FOIA or the Environmental Information Regulations. Without prejudice to Clauses 8.7 to 8.11, each Party will notify (where it is legally able to do so)

the other Party of the disclosure (or proposed disclosure) as soon as is reasonably possible and will use its reasonable endeavours to ensure that any such disclosure is made in a manner which ensures the confidentiality of the Confidential Information.

8.6 Subject to the above provisions of this Clause 8, each Party receiving Confidential Information will take the same precautions and exercise the same degree of care to protect Confidential Information as it takes and exercises in relation to its own confidential information. In any event, the receiving Party will take all reasonable care to protect said Confidential Information.

8.7 The Contractor acknowledges that where the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations it shall assist and cooperate with the Customer (at the Contractor's expense) to enable the Customer to comply with the Information disclosure requirements set out in Clauses 8.8 to 8.14 below.

8.8 The Contractor shall:

8.8.1 notify the Customer and transfer the Request for Information to the Customer as soon as practicable after receipt and in any event within 2 Business Days of receiving a Request for Information;

8.8.2 provide the Customer with a copy of all Information in its possession or power in the form that the Customer requires within 5 Business Days (or such other period as the Customer may specify) of the Customer requesting that Information; and

8.8.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

8.9 The Customer shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

8.9.1 is to be disclosed in response to a Request for Information, and

8.9.2 in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Customer.

8.10 The Contractor acknowledges that notwithstanding Clause 8.4 the Customer may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA, or the Environmental Information Regulations to disclose Information:

8.10.1 without consulting with the Contractor, or

8.10.2 following consultation with the Contractor and having taken its views into account.

8.11 Without prejudice to Clause 8.9, in the event that the Customer receives a request under the FOIA or Environmental Information Regulations which encompasses any

Information held by the Customer which was provided to the Customer by the Contractor in connection with this Contract, the Customer will notify the Contractor of the request and allow the Contractor to make timely representations in relation to the impact any such disclosure may, in the Contractor's opinion, have on the confidentiality obligations under the Contract and any other representation it may have in relation to the disclosure of that Information.

8.12 The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

8.13 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with Clause 8.4 or Clause 8.5.

8.14 At all times the Customer shall ensure that its disclosure of any information which has been provided to the Customer by the Contractor is limited to the minimum extent necessary for the Customer to comply with its obligations under this Clause 8.

9. DATA PROTECTION

9.1 If and to the extent that the Contractor (for the purpose of this Clause 9, the "Data Processor") Processes any Personal Data on behalf of the Customer (for the purpose of this Clause 9, the "Data Controller"), the Data Processor undertakes to the Data Controller that the Data Processor shall:

9.1.1 comply with the obligations imposed on the Data Controller by the Seventh Data Protection Principle, namely:

(a) to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Data Controller by the Seventh Data Protection Principle; and

(b) to take reasonable steps to ensure the reliability of any employees of the Data Processor who have access to Personal Data;

(c) ensure all employees of the Data Processor who have access to Personal Data have undertaken appropriate data protection and information security training; and

(d) only to Process Personal Data for and on behalf of the Data Controller for the purpose of performing and in accordance with this Contract (and only on instructions from the Data Controller, including those in this Contract, to ensure compliance with the DPA); and

(e) to allow representatives of the Data Controller (or a regulator where applicable) to audit the Data Processor's compliance with the requirements of this Clause 9 on reasonable notice, including:

(i) if requested, before any Services commence; and/or

(ii) no more than once during any subsequent year of the Contract; and/or

(iii) at any time if any regulator of the Customer requests or requires an audit of the Customer and/or any of its service providers;

(f) at the option of the Data Controller, on request, to provide the Data Controller with evidence of the Data Controller's compliance with the Data Processor's obligations under this Clause 9;

9.1.2 only store Data within the European Economic Area and not transfer any Personal Data outside the European Economic Area without the prior written consent of the Customer, and in granting consent to the transfer, the Customer may impose such terms on the Processing of the Personal Data and on the Contractor and/or any overseas processor of the data as the Customer requires to ensure that the Personal Data is adequately protected (as required by the eighth data protection principle set out in Schedule 1 of the DPA); and

9.1.3 assist the Data Controller to comply with any obligations imposed on the Data Controller by the DPA in relation to any Personal Data Processed by the Data Processor including:

(a) providing the Data Controller with reasonable assistance in complying with any subject access request served on the Data Controller under the DPA;

(b) as soon as possible (and in any event within 24 hours) notifying the Data Controller of any unauthorised access to, or any loss or destruction of, or damage to, any Personal Data;

(c) promptly informing the Data Controller about the receipt of any subject access request received by the Data Processor in relation to Personal Data Processed pursuant to this Contract; and

(d) not disclosing any Personal Data in response to a subject access request without first consulting with and obtaining the consent of the Data Controller.

9.2 In the following circumstances, the Contractor shall cease immediately to use or Process any such Personal Data received from, or on behalf of, the Customer under this Contract and shall return to the Customer on demand (or at the request of the Customer destroy or permanently erase) all Personal Data and copies of those Personal Data in its possession or control:

9.2.1 on termination of this Contract (or upon expiry of any termination assistance period); or

9.2.2 upon written request at any time.

9.3 The Contractor shall give the Customer a certificate signed by one of its senior managers confirming that it has fully complied with Clause 9.2.

9.4 The Contractor acknowledges and agrees that the Customer owns the Intellectual Property Rights in the Personal Data and such data remains the property of the Customer. To the extent strictly necessary, the Customer hereby grants the Contractor a non-exclusive, royalty-free license to use the Intellectual Property Rights in the Personal Data solely for the purposes of this Contract.

9.5 The Contractor will promptly notify the Customer about any matter which may cause the Customer to become non-compliant with the any relevant legislation applicable to the Processing in respect of the Personal Data and provide such information about remediation as the Customer shall reasonably require. The Customer may require the Contractor to suspend the Processing until the breach is remedied to the satisfaction of the Customer.

9.6 If the Contractor appoints subcontractors, as may be approved by the Customer from time to time, as further Data Processors on behalf of the Customer, such further Data Processors shall be engaged on terms providing equivalent protections in relation to the Personal Data to those set out in this Contract and provide equivalent rights to the Customer against the further Data Processors.

9.7 The Contractor shall indemnify the Customer against any loss or damage suffered by the Customer, including any fines imposed on the Customer by the Information Commissioner or other regulator of the Customer, in relation to any breach by the Contractor of its obligations under this Clause 9.

10. INFORMATION SECURITY

10.1 The Contractor undertakes to comply with industry best IT security practice in providing the Services, which shall include compliance with ISO 27001 or its replacement from time to time.

10.2 The Contractor will ensure that it implements and maintains appropriate security controls to ensure the confidentiality and integrity of all Data, including any security measures set out in Schedule 1 and the Secure Access Control Measures. The Contractor shall not downgrade the security configuration of any system processing any Data without the prior written consent of the Customer.

10.3 Without prejudice to the generality of Clauses 10.1 and 10.2, the Contractor shall ensure that all Data is protected at all times, in such manner as is consistent with the data security classification agreed between the parties as applicable to such data, from corruption, and from unauthorised access and interference, both while such Data is within the possession and control of the Contractor and while (if transmission is consistent with the classification of such Data and is strictly required for the purpose of performing the Services) it is in transit across a network (whether public or private).

10.4 Unless instructed otherwise by the Customer, the Contractor shall not:

10.4.1 disclose, use, modify, store, copy or adapt the Data, unless specifically and expressly required for the purposes of complying with its obligations under this Contract;

10.4.2 merge or combine the Data with other data; or

10.4.3 remove any proprietary or copyright notices contained within or relating to the Data, except as may be necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised by the Customer.

10.5 In the event that the Data is corrupted or lost or sufficiently degraded as to be unusable, the Contractor shall:

10.5.1 immediately notify the Customer of the occurrence of the loss or corruption of the Data;

10.5.2 restore, or procure the restoration of, the Data to the extent required by, and in accordance with, the Contractor's Information Security Plan;

10.5.3 provide the Customer with a full refund in respect of any charges levied by the Contractor in respect of the collection, processing, storage and/or transmission of the proportion of the Data which has been corrupted, lost or become unusable; and

10.5.4 indemnify the Customer against all losses, costs and expenses incurred by the Customer as a result of such corruption to or loss of Data.

10.6 The Contractor shall ensure:

10.6.1 the logical segregation of the Data from any data of any third party;

10.6.2 it has in place appropriate measures to protect against any virus or malicious attack (including denial of service attacks) which may impact on the Data;

10.6.3 it has in place appropriate physical and technical access control measures, including physical access restrictions to its data centres to ensure that only those persons who require access to the Data for the purposes of this Contract are able to access the Data; and

10.6.4 it implements, and complies at all times with, the Secure Access Control Measures.

10.7 Within 1 month after the Effective Date, the Contractor shall develop an Information Security Plan that will ensure the confidentiality and security of the Customer's Confidential Information and shall submit the plan to the Customer for review and approval. The Customer may require that amendments are made to the Information Security Plan before it can be approved by the Customer. Once the Information Security Plan has been approved by the Customer, the Contractor shall implement the Information Security Plan in accordance with its terms.

10.8 The Contractor shall ensure that it has in place a facility for off-line back up with a reputable data and software escrow provider which has either been chosen or approved by the Customer. The Contractor shall ensure that:

10.8.1 its agreement with the escrow provider ensures the release of the Data to the Customer on termination or expiry of this Contract for any reason;

10.8.2 its arrangements with the escrow provider enable the Contractor to provide fully the exit services described in Schedule 1;

10.8.3 the performance by the Contractor of the exit services described in Schedule 1 shall enable the Customer to access and gain control, and take possession, of all Data.

11. DISASTER RECOVERY AND BUSINESS CONTINUITY

11.1 As a minimum and to ensure the resilience of the Services, the Contractor shall ensure that the Services are provided from two synchronised data centres (in addition to the back up facility provided in accordance with Clause 10.8).

11.2 The Contractor shall deliver to the Customer a copy of its disaster recovery and business continuity plan on request. The Contractor shall maintain and test its disaster recovery and business continuity plan on a regular basis (no less than once in every 12 month period). Any changes the Contractor makes to its disaster recovery and business continuity plan will provide at least the same level of disaster recovery and business continuity as the then current disaster recovery and business continuity plan. The Contractor will notify the Customer when any material changes are made to its disaster recovery and business continuity plan and shall, on request, provide a copy of such updated plan to the Customer.

11.3 Each Party shall notify the other Party as soon as reasonably possible if it believes that there has been, or is likely to be, a material disruption to business continuity that requires the implementation of the Contractor's disaster recovery and business continuity plan. In the event of any such material disruption the Contractor shall promptly implement its disaster recovery and business continuity plan in accordance with its terms and using Good Industry Practice.

11.4 The Contractor will ensure that any system on which the Contractor holds Data, including backup data, is a secure system that ensures complete data integrity in accordance with Good Industry Practice.

12. LIABILITY

12.1 Nothing in this Contract will limit or exclude the liability of either Party for death or personal injury arising out of its negligence, or for its fraud or for any other loss which cannot by law be excluded or limited.

12.2 Subject to Clause 12.1:

12.2.1 in no circumstances will either Party be liable to the other Party for any loss of business, revenue, profits, anticipated savings or goodwill (whether direct or indirect) or for any indirect, special or consequential loss arising out of or in connection with this Contract;

12.2.2 each Party's maximum aggregate liability under or in connection this Contract or its subject matter will not exceed £[ ]. [To be negotiated between the Contractor and the Customer on a contract by contract basis.]

12.3 The exclusions and limitations in Clause 12.2 shall not apply to:

12.3.1 any liability of the Contractor in respect of:

(a) the indemnities in Clauses 9.7 and 10.5.4; or

(b) breach of its obligations in Clause 10 (Information Security);

12.3.2 any liability of either Party for breach of that Party's obligations in Clause 8 (Confidentiality).

12.4 The exclusions and limitations in Clause 12.2.2 shall not apply to any liability of the Contractor in respect of the indemnity in Clause 3.2.

13. INSURANCE

13.1 The Contractor undertakes that for the duration of this Contract, it will be covered against employee misfeasance, accident, third party injury, defective products, fire and other risks normally covered by insurance by persons supplying services which are the same or similar to the Services, with the minimum levels of insurance as set out below:

13.1.1 [insert]

13.2 The Contractor will produce to the Customer, at its reasonable request, satisfactory evidence of the insurance arrangements described in Clause 13.1.

14. TERM, TERMINATION AND EXIT

14.1 Unless terminated by either Party in accordance with the terms and conditions of this Contract, this Contract will commence on the Effective Date and will continue for the term set out in Schedule 1 ("the Initial Term"). This Contract shall continue after the Initial Term unless and until terminated by either Party giving not less than 3 months prior written notice to the other, such notice to expire at the end of the Initial Term or at any point thereafter ("the Extended Term").

14.2 Without prejudice to the rights and remedies of the Contractor and any Customer, either the Customer or the Contractor may terminate this Contract immediately by giving the other Party written notice:

14.2.1 in the event of a material breach by the other Party which is incapable of remedy;

14.2.2 in the event of a material breach by the other Party which is capable of remedy but which the other Party fails to remedy within 20 Business Days of having been notified of such breach; or

14.2.3 if the other Party has a receiver, administrative receiver, administrator or other similar officer appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other Party becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business or is unable to pay its debts or is deemed by section 123 of the Insolvency Act 1986 to be

unable to pay its debts, or undergoes or is subject to any analogous acts or proceedings under any foreign law.

14.3 The Customer may terminate this Contract in accordance with paragraph 1.2 of Appendix 4 to this Contract.

14.4 Termination of this Contract will be without prejudice to the Parties' accrued rights and obligations.

14.5 On termination or expiry of this Contract, the Parties shall perform any and all termination and/or exit obligations set out in Schedule 1. In particular, the Contractor shall ensure that all Data is returned to the Customer or, at the Customer's election, securely destroyed in accordance with Good Industry Practice and shall perform the exit services described in Schedule 1. Unless otherwise stated in Schedule 1, each Party shall perform its post termination obligations at its own cost and expense.

14.6 Clauses 1 (Definitions), 3 (Intellectual Property Rights), 8 (Confidentiality), 12 (Liability); 13 (Insurance), 14.3 to 14.6 (Termination), 15 (Audit), 16 (Severability), 18 (Third Party Rights), 19 (Counterparts), 20 (No Partnership), 21 (Assignment), 23 (No Waiver), 24 (Notices), 25 (Entire Agreement), 26 (Dispute Resolution), 27 (Variation) and 28 (Governing Law) of this Contract will continue notwithstanding termination of this Contract.

14.7 In addition to any particular exit services identified in Schedule 1, the Contractor shall develop and prepare a draft high level exit plan (the "**Exit Plan**") no later than 1 month following the Effective Date for review and approval by the Customer.

14.8 The Parties shall review the Exit Plan annually throughout the Term. The Contractor shall, where required, prepare drafts of updates and amendments to the Exit Plan for approval by the Parties following such reviews.

14.9 Within 10 Business Days of sending or receiving notice of termination in respect of all or part of this Agreement, the Parties shall meet and use all reasonable endeavours to agree the contents of revisions to the Exit Plan required at the date of termination. The Contractor shall implement the Exit Plan at the relevant time.

15. AUDIT

15.1 In addition to the rights contained at Clause 9.1.1(e), the Customer shall have the right during normal business hours and on reasonable notice to inspect and take copies of all relevant records and/or information, and/or to authorise agents or representatives appointed by the Customer to do so, in relation to any matter in connection with the Services or this Contract including:

15.1.1 to assess the delivery of the Services in accordance with this Contract (including against the Milestones and the Service Levels);

15.1.2 investigation of any fraudulent or negligent activity;

15.1.3 to verify the calculation of the Prices.

15.2 The Customer's right in Clause 15.1 shall continue in force for 1 year after termination or expiry of this Contract.

15.3 The Customer shall use its reasonable endeavours to ensure that the conduct of an audit under this Clause 15 does not unreasonably disrupt the Contractor's business.

15.4 The Contractor shall on demand provide the Customer (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit including without limitation all information requested by the Customer (and/or its agents or representatives) within the scope of the audit and access to the Contractor's personnel and/or the Contractor's systems and/or premises.

15.5 Each Party shall bear its own costs of any audit provided that where audit shows that the Contractor has over-charged the Customer by more than 4%, the Contractor shall bear the Customer's costs of the audit and shall promptly reimburse the Customer the amount of such overpayment.

15.6 If any agent or representative of the Customer is authorised to conduct an audit on behalf of the Customer, such agent or representative shall undertake in advance to the Contractor to keep all information obtained strictly confidential and not to use or disclose any such information except for the purpose of reporting the results of its audit to the Customer.

16. SEVERABILITY

16.1 If any provision of this Contract, including in particular any limitation, is held by a court or any governmental agency or authority to be invalid, void, or unenforceable, the remainder of this Contract will nevertheless remain legal, valid, and enforceable.

17. FORCE MAJEURE

17.1 Notwithstanding anything herein to the contrary but subject to Clause 17.2, neither Party will be liable for any delay or failure in performance of any of its obligations under this Contract, to the extent such delay or failure is attributable to a Force Majeure Event.

17.2 Each Party which is prevented from carrying out its obligations as a result of a Force Majeure Event will promptly notify the other Party and will agree an action plan with the other Party, at the cost of the Party prevented from carrying out its obligations as a result of the Force Majeure Event, to mitigate the effects of the Force Majeure Event.

17.3 If performance of the obligations of the Contractor is substantially prevented for a continuous period of 15 Business Days or more by virtue of any of the aforesaid events then the Customer may terminate this Contract, without any liability, by giving the Contractor written notice.

18. THIRD PARTY RIGHTS

18.1 A person who is not a Party to this Contract shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

19. COUNTERPARTS

19.1 This Contract may be executed in counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

20. NO PARTNERSHIP

20.1 Nothing in this Contract and no action taken by the Parties pursuant to this Contract will constitute or be deemed to constitute between the Parties a partnership, association, joint venture, or other co-operative entity.

21. ASSIGNMENT

21.1 Subject to Clause 21.2 below, neither Party may assign its rights and/or obligations under this Contract without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

21.2 The Contractor may assign any of its rights and/or obligations under this Contract to a member of its Group. In such cases:

21.2.1 the Contractor shall promptly inform the Customer in writing of the identity of the assignee;

21.2.2 the Contractor shall remain liable for any acts and/or omissions under this Contract irrespective of the assignment; and

21.2.3 if the relevant assignee ceases to be a member of the Contractor's Group then the Contractor shall ensure that this Contract is promptly transferred back to the Contractor and/or a member of its Group.

22. SUBCONTRACTING

22.1 The Contractor shall be entitled to subcontract parts of the Services to subcontractors without notice (subject to Clause 9.6) provided that the Contractor shall ensure that its contracts with such subcontractors contain terms equivalent to Clauses 8 (Confidentiality), 9 (Data Protection) and 10 (Information Security). The Contractor shall be liable for the acts and omissions of its subcontractors.

23. NO WAIVER

23.1 Failure by either Party to exercise or enforce any right or benefit conferred by this Contract will not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.

24. NOTICES

24.1 Any notice required or authorised to be given under this Contract will be delivered by hand or by post to the relevant address stated at the start of this Contract or to such other address as notified (in accordance with this Clause 24) by one Party to the other during the Term.

24.2 Any notice will be deemed to have been served:

24.2.1 immediately if delivered by hand; or

24.2.2 48 hours after posting if delivered by post.

24.3 Notices may also be delivered by email to such email address as notified (in accordance with this Clause 24) by one Party to the other during the Term, provided that the sender is able to verify that the email reached the recipient's servers without error. Service of a notice by email will be deemed to have occurred upon reaching the recipient's server without error.

24.4 Where notices are to be served by email, the email must contain the following wording in the subject matter field: "Notice served in accordance with the terms of the Contract between [the Customer's name] and [insert Contractor's name]".

25. ENTIRE AGREEMENT

25.1 This Contract contains the entire agreement and understanding of the Parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Contract, other than as may be set out in the Framework Agreement. Each of the Parties acknowledges and agrees that it does not enter into this Contract on the basis of and does not rely, and has not relied upon, and will have no remedy in respect of, any statement or representation or warranty or other provision made, given or agreed to by the other Party to this Contract (whether negligently or innocently made) except those expressly repeated or referred to in this Contract and/or the Framework Agreement. Nothing in this Clause will operate to limit or exclude liability for fraud.

26. DISPUTE RESOLUTION

26.1 Without prejudice to Clause 14, in the event of a dispute between the Parties concerning this Agreement, each of the Parties will, in the first instance, endeavour to reach an agreement in respect of the dispute by following the escalation process set out in Clauses 26.2 to 26.8 below.

26.2 The aggrieved Party shall provide the other Party with written notice and the problem will initially be referred to the first level contact given in the table below (the "First Level").

26.3 If the problem is not resolved at the First Level or a corrective plan of action has not been mutually agreed upon within 10 Business Days of giving the dispute notice then either Party shall have the option to escalate the matter to the second level contact given in the table below (the "Second Level").

26.4 If the problem is not resolved at the Second Level or a corrective plan of action has not been mutually agreed upon within 5 Business Days of giving the dispute notice then either Party shall have the option to escalate the matter to the third level contact given in the table below (the "Third Level").

26.5 If the problem is not resolved at the Third Level or a corrective plan of action has not been mutually agreed upon within 5 Business Days of giving the dispute notice then either

Party shall have the option to escalate the matter to the final level contact given in the table below (the "Final Level").

26.6 The Final Level representatives agree to use all reasonable efforts to meet within 10 Business Days at a mutually agreeable time and place in order to resolve the dispute.

Escalation Points

Escalation Level	Contractor Contacts	Customer Contacts
First Level	Cathy Brode Cathy.Brode@arkivum.com	[ ]
Second Level	None	[ ]
Third Level	Mark Ellis Mark.Ellis@arkivum.com	[ ]
Final Level	Jim Cook jim.cook@arkivum.com	[ ]

26.7 Without prejudice to each Party's rights to terminate the Agreement, if the Parties are unable to reach agreement on the disputed matter through the process as specified in Clauses 26.1 to 26.6, they may agree to settle it by mediation in accordance with the Centre for Effective Dispute Resolution **(CEDR)** Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation the Parties will send a joint notice in writing ("**ADR notice**") to CEDR requesting mediation.

26.8 The mediation will start not later than 30 days after the date of the ADR notice, or such later date as the mediator is available. The commencement of mediation will not prevent the Parties commencing or continuing court proceedings, unless the parties agree otherwise.

27. VARIATION

27.1 Without prejudice to Clause 4.3, no variation of this Contract will be valid unless recorded in writing and signed by or on behalf of each of the parties.

28. GOVERNING LAW AND JURISDICTION

28.1 This Contract and all matters arising out of it (whether of a contractual or a tortious nature) will be governed and construed in accordance with the laws of England and the Parties irrevocably agree to the exclusive jurisdiction of the Courts of England and Wales.

IN WITNESS WHEREOF, the Parties, intending hereby to be legally bound, by their authorised officers, have executed this Contract on the date first here written.

……..

Signed for and on behalf of

[INSERT CUSTOMER DETAILS]

Name: Position:

Date:

……..

Signed for and on behalf of

[INSERT CONTRACTOR DETAILS]

Name: Position:

Date:

PRO-FORMA CONTRACT – SCHEDULE 1

CONTRACT TERM	
Initial Term	[To be inserted]
Implementation Date	[To be inserted]