

Form of Award for the
Income and Payment Management Systems

Contract Reference: AMT12131

Contract between Folkestone and Hythe District Council (the “Customer”)
and Capita Business Services Limited (the “Supplier” or “Capita”)

Awarded under the
Managed Services for Business Framework Agreement – Y20023


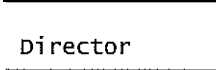
FORM OF AWARD

Award Reference: **Y20023 Supply of Managed Services for Business**

In accordance with the Framework Agreement awarded by Kent County Council, we the undersigned offer to supply **Folkestone and Hythe District Council** whose address is **Civic Centre, Castle Hill Ave, Folkestone CT20 2QY** with income and payment management systems as detailed in Appendix A of this Form of Award, under the terms and conditions set out in Appendices B and C, for the timeframe of **1st April 2023 to 31st March 2028**.

Authorised to sign for and on behalf of the Supplier

Date: 13 March 2023

Signature: _____
Name: _____
Position: Director

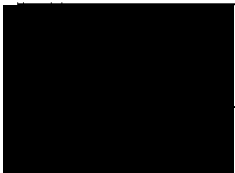
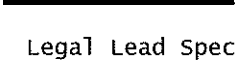
Name of Supplier and Registration Number if applicable:

Registered Address:
Capita Business Services Limited
65, Gresham Street
London
EC2V 7NQ
Company Number 02299747

Telephone: _____
E-Mail Address: _____

Authorised to sign for and on behalf of the Customer

Date: 13 March 2023

Signature: _____
Name: _____
Position: Legal Lead Specialist

APPENDIX A

The Service provided by the Supplier is the provision of an income payment services platform and gateway which supports electronic payment transactions. It is inclusive of the software products and services as set out in Appendix B and listed below.

sCloud Income Management S-Cloud service and additional terms of use are set out in the attached (any reference to Capita within this document shall be deemed to be a reference to Pay360 Limited who as a subcontractor to Capita Business Services Limited will be operating the S-Cloud service):



S Cloud Terms and
Conditions.docx

sCloud Paye.net, a browser-based solution that supports payments by debit or credit card taken over the telephone, with **CallSecure** which removes the requirement for card details to be read out loud. Also provides a **portal** which provides purely the card entry pages and authorisation process to provide a seamless integration with any e-forms package.

Secure Card Portal (SCP) which provides purely the card entry pages and authorisation process to provide a seamless integration with any third-party website, front-end form, specialist system or application to capture customer details and what they are paying for.

Automated Touchtone System a secure, convenient, fast and easy to use option to make 24x7 self-service payments using the telephone keypad.

PAYMENT APPLICATION-SPECIFIC ADDITIONAL TERMS – sCloud

These Payment Application-Specific Additional Terms contain additional terms that apply whenever Customer is granted access to the sCloud Service. The sCloud Service is a software-as-a-service subscription product, including updates thereto made generally available by Capita to its customers, (the “SaaS Product”).

1. SCLLOUD SERVICE.

- | | | |
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| | | |
| <p>1.1.1 Infrastructure: The following Capita infrastructure is in place for the provision of the sCloud subscription services:</p> <ul style="list-style-type: none"> (a) Database servers including the version of database required to operate the system; (b) Application servers including the version of operating system required to operate the system; (c) Web servers required for the deployment of solution; (d) The core site and required hardware for the infrastructure; (e) Disaster recover site and all links and associated hardware required to provide the service; and (f) Links for all telecommunications to ensure that the solution is accessible via a standard internet connection within the confines of the SLA. | <ul style="list-style-type: none"> (b) All database related patches required to maintain the solution and security; (c) All web server related patches required to maintain the solution and security; (d) All maintenance in relation to the disaster recover site; (e) Upgrades and patches of capita software installed on the environment; and (f) Upgrades to the environments will be scheduled as Capita advises. | <p>secure and maintain the application;</p> |
| <p>1.1.2 Upgrades and Maintenance: Capita will install and maintain:</p> <ul style="list-style-type: none"> (a) All operating system related patches required to keep the solution | <p>1.1.3 Capacity</p> <ul style="list-style-type: none"> (a) At the time of contract an agreed maximum capacity will be outlined. If this capacity is increased, then price increases in line with the agreed banding will be applied. | <p>1.1.4 Licensing: The agreement covers the following licenses required to run the solution:</p> <ul style="list-style-type: none"> (a) Microsoft SQL server (b) Microsoft Windows Server |

- | | |
|---|--|
| <p>(c) Capita Software</p> <p>(d) Business Objects runtimes</p> <p>(e) Five Citrix Licences - distributed; 3 to live and 2 to test. Additional licenses are available on request for an additional charge</p> <p>1.1.5 The agreement does not cover:</p> <p>(a) The Customer's own workstation requirements and licenses</p> | <p>2.1.3 For the avoidance of doubt, this contract does not cover:</p> <p>(a) Internal daily procedures related to your own applications configuration.</p> <p>(b) Any administration associated with the day to day running of your system</p> <p>(c) Links from the customer site to the Capita Hosted system</p> <p>(d) Access for your internal users to solution hosted on the Hosted system</p> <p>(e) Links to the internet from your own workstations required for some services.</p> <p>(f) Your own security compliance.</p> <p>2.1.4 The Customer will provide Capita with all information, access, and full good faith cooperation reasonably necessary to enable Capita to deliver the Professional Services.</p> |
| <p>2. <u>CUSTOMER OBLIGATIONS.</u></p> | |
| <p>2.1 In addition to Customer's obligations under the Agreement, with respect to the SCloud Service, Customer shall be responsible for:</p> <p>2.1.1 Ensuring the SCloud Service is suitable for Customer's business requirements;</p> <p>2.1.2 The supply of the following:</p> <p>(a) Adequate resource at point of upgrade for internal acceptance testing of the solution post any upgrade into the customer test environment.</p> <p>(b) This resource should be available for the duration of the agreed testing period and should provide immediate feedback on any issues found.</p> <p>(c) The Customer will provide Capita with all information, access, and full good faith cooperation reasonably necessary to enable Capita to deliver the Professional Services.</p> | <p>3. Capita Obligations.</p> <p>3.1 In addition to Customer's obligations under the Agreement, with respect to the SCloud Service, Capita is responsible for providing access to the hosted SCloud Service in accordance with the terms of the Agreement.</p> <p>4. <u>CHANGES.</u></p> <p>4.1 From time-to-time Capita may introduce enhancements and fixes to the SCloud Service provided that such alterations do not have a material adverse effect on the existing functionality of the SCloud Service.</p> |

Any alterations to the SCloud Service that are introduced pursuant to this Section **Error! Reference source not found.** shall be made available on request or via updates to the manuals and release notes available on request and shall form part of the Agreement.

5. **TESTING.**

- 5.1 Customer shall undertake all reasonable due diligence around testing of any configuration changes made by Capita to the SCloud Service, to ensure they meet the requirements agreed in the configuration documentation and instructions given by the Customer.

APPENDIX B

The Customer shall pay the Charges set out in Table 1 (Charges) below during the Term of this Agreement, where Agreement means the terms of the Framework Agreement and the terms set out in this Form of Award (the "Agreement").

Table 1 – Charges

DESCRIPTION OF ITEM	UNIT PRICE (£)	QTY	TOTAL PRICE (£)	ANNUAL SUPPORT (£)
sCloud Managed Service renewal				
sCloud Managed Income Management & Paye.net Licence renewal	-	1	-	
Software maintenance				
Payment Portal Licence	-	1	-	
Touch Tone Licence including PCNs Module Licence	-	1	-	
Paye.net Portal Licence	-	1	-	
Call Secure Licence	-	1	-	
eCommerce/MOTO Transaction Charges				
Visa Credit cards 1.250% per transaction value				
MasterCard Credit cards 1.250% per transaction value				
Visa Debit/Electron cards 0.40% per transaction value				
MasterCard Debit cards 0.40% per transaction value				
Visa Business cards 1.350% per transaction value				
Visa Commercial cards 2.6% per transaction value				
MasterCard Commercial cards 2.6% per transaction value				
Total Cost			£ -	£6,626.75 PA
Plus sCloud Annual Payments Fixed for 5 Years (minimum term):				
Annual Payment for Year 1 – due on anniversary of Go Live of system				£17,250.00
Annual Payment for Year 2 – due on anniversary of Go Live of system				£17,250.00
Annual Payment for Year 3 – due on anniversary of Go Live of system				£17,250.00
Annual Payment for Year 4 – due on anniversary of Go Live of system				£17,250.00
Annual Payment for Year 5 – due on anniversary of Go Live of system				£17,250.00

The Charges are based on a minimum term of five (5) years commencing 1st April 2023 (the "Term").

Capita's standard Payment Profile is as follows:

Maintenance/Support/Hosting Services:

- annual support/maintenance/hosting, (the £6,626.75 value stated in the above) will be payable in advance on 1st April 2023 and annually thereafter until expiry of the Agreement.

S-Cloud support:

- annual support charge will be in advance in May 2023 and annually thereafter until expiry of the Agreement.

Transaction charges:

- Charges are payable monthly in arrears payable by direct debit within ten (10) days of the date of invoice.

All Charges are shown exclusive of UK VAT, which shall apply at the prevailing rate.

The Charging is based on the Customer processing at least 95,000 transactions per contract annum (the "Minimum Annual Transaction Processing Volume") which shall commence 1st Aril 2023 and renew annually thereafter ("Contract Year"). Annual reconciliations shall be made at the end of each Contract Year. If the Minimum Annual Transaction Processing Volume is not achieved the Customer agrees to pay the difference between fees paid and Charges due in relation to the actual transactions (excluding failed transactions) processed during the relevant annual Contract Year and the fees and or Charges that would have been payable had the Minimum Transaction Processing Volume be achieved.

Charges may be increased annually in line with the Retail Price Index (RPI) as published by the Office of National Statistics (or its successor) ("Inflation Increase") and Supplier shall be entitled to increase the Charges upon thirty (30) days' notice in circumstances where there is an increase in Supplier's third-party costs associated with the Service and where such increase is no greater than the percentage increase of such applicable third-party costs.

Where applicable, any on-site service days' cost excludes expenses, and reasonable travel, subsistence costs and carriage (where incurred) are rechargeable as disbursements at cost.

All charges assume that TUPE does not apply in respect of the Services provided by the Supplier. For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed by the parties should TUPE nonetheless apply then the Supplier shall be entitled to revise its Charges should there be a material and negative impact on its costs.

The Supplier shall provide the Services in accordance with the Service Charter set out at Annex 1.

Annex 1 - Supplier Service Charter



Pay360 Service
Charter - Public Secto

APPENDIX C – SUPPLIER TERMS AND CONDITIONS OF INDIVIDUAL CONTRACT Y20023

This Form of Award is subject to the Individual Contract Terms and Conditions set out in Annex I of the Y20023 framework agreement, (such terms including the Compulsory Terms and Conditions, Part Compulsory Terms and Conditions and Non-Compulsory Terms and Conditions) save as varied by the special terms set out below:

Special Term 1 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that the software services provided by the Supplier are not subject to the warranty provisions of Clause 5 of the Compulsory Terms, rather the Supplier does not warranty that its software shall be free from defects or the service will be uninterrupted, however the Supplier shall provide support, including incident management support, with regards to its software services in accordance with its Service Charter. Moreover, the parties acknowledge and agree that the Supplier utilises leveraged systems in providing its software services and that such leveraged infrastructure does not constitute an encumbrance for the purposes of the interpretation of clause 5.

Special Term 2 - For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that the Authority's own internal policies and guidelines in respect of diversity shall be met, by the Supplier, provided the Supplier complies with the following: Equalities Act 2010 and Codes of Practice issued by the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission.

Special Term 3 - For the purposes of the interpretation of this Individual Contract and specifically Clause 18 it is acknowledged and agreed that no Liquidated Damages are in scope.

Special Term 4 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that no Goods are in scope as the scope of service for this Individual Contract is the provision of a software service.

Special Term 5 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that the provisions of clause 23.4 do not apply.

Special Term 6 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that the Supplier is not contracting on the basis of a Conditional Tender and as such clause 27 of the Compulsory Terms and Conditions does not apply to this Individual Contract.

Special Term 7 – Clauses 30 and 43 are deemed to be disapplied and replaced with the following revised Clause 30

30.1 Neither party shall exclude or restrict its liability in connection with this Individual Contract resulting from death or personal injury caused by negligence.

30.2 Subject to Clause 30.1 the aggregate liability of the Supplier whether for damages, payments of compensation or by way of indemnity or of any nature howsoever arising under or in relation to this Individual Contract or any part thereof (including as a result of negligence) shall be limited to 125% of the aggregate payments made by the Customer/Participating Authority to the Supplier in the preceding twelve (12) months, in respect of that part of the Software or Services in respect of which the liability has arisen. Supplier shall have no obligations or liability whatsoever, whether direct or indirect, to the

Customer/Participating Authority for the services provided by any financial organisation providing payment acquirer services unless expressly agreed otherwise by the parties.

- 30.3 In no event shall the Supplier be liable to the Customer in respect of loss of profits, business, revenue, goodwill or anticipated savings or indirect or consequential loss or damage (whether caused by negligence or otherwise) or the acts or omissions of any third party (whether as a result of negligence or otherwise).
- 30.4 In order to cover its liabilities, the Supplier shall maintain, and require that any permitted Sub-Contractors maintain, as a minimum throughout the Individual Contract Period;
- 30.4.1 Product and Public Liability Insurance – limit £5 million (Five million pounds sterling) per claim or series of related claims and in the aggregate;
- 30.4.2 Employer’s Liability Insurance – limit £5 million (Five million pounds sterling) per claim or series of related claims and in the aggregate;
- 30.4.3 Professional Indemnity Insurance – Limit £1 million (One million pounds sterling) per claim or series of related claims and in the aggregate, if supplying an associated Service;
- 30.4.4 if the Customer/Participating Authority requires a variant level of insurance then this will be requested at the Further Competition/Purchase Order stage of the Individual Contract. Failure to revise the insurance level may cause exclusion from the process;
- 30.4.5 where applicable, the Supplier is responsible for comprehensively insuring all fleet items including vehicles maintained by the Supplier against third party claims and for accidental damage, fire, theft or loss whilst in the custody or control of the Supplier; and
- 30.4.6 any other insurances required under any applicable legislation or at time of Individual Contract.
- 30.5 Should the Supplier fail to provide upon reasonable notice satisfactory evidence of insurance referred to in Clause 30.4, the Customer/Participating Authority may:
- 30.5.1 at its discretion arrange suitable cover. Any premiums paid by the Customer/Participating Authority to affect such insurance on behalf of the Supplier shall be recoverable from the Supplier or, at the Customer/Participating Authority option, deducted from any money owed to the Supplier;
- 30.5.2 require the Supplier to effect and provide evidence of suitable cover within seven (7) days of notification;
- 30.5.3 cancel this Individual Contract with immediate effect.

30.6 The Customer/Participating Authority will afford the Supplier an agreed number of days, or otherwise thirty (30) days in which to remedy any Default exclusive of the Service Level Agreement (SLA) associated Key Performance Indicators (KPI's) and the Escalation Process (Clause 29).

Special Term 8 – Clause 31 is deemed to be disapplied and replaced with the following revised Clause 31:

31.1 Not Used

31.2 Not used

31.3 Not used

31.4 Either party may terminate this Individual Contract at any time, where;

32.4.1 There is an Insolvency Event;

32.4.2 If any Party embarrass or bring the other Party into disrepute or diminish the public trust in them.

31.5 The Supplier shall notify the Customer/Participating Authority as soon as practically possible if the Supplier undergoes a change of control. The Customer/Participating Authority may terminate, only where the delivery of Services/Individual Contract is likely to be materially impacted by such a change of control, by notice within six (6) months of: -

31.5.1 being notified that a change of control has occurred; or

31.5.2 where no notification has been made, the date that the Customer/Participating Authority becomes aware of the Change of Control;

But shall not be allowed to terminate where an approval was granted prior to the Change of Control and not in the circumstances where the applicable six (6) months period has expired.

Termination on Default

31.6 The Customer/Participating Authority may terminate the Individual Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a Material Default and if: -

31.6.1 The Supplier has not remedied the Material Default within thirty (30) working days, or such greater period as may be specified by the Customer/Participating Authority, after issue of a written notice stating the Material Default and requesting the Material Default to be remedied; or

31.6.2 the Material Default is not capable of remedy.

- 31.7 If the Customer/Participating Authority fails to pay the Supplier undisputed sums of money when agreed by Individual Contract, the Supplier shall notify the Customer/Participating Authority in writing of such failure to pay. If the Customer/Participating Authority fails to pay such undisputed sums, within ten (10) days then all undisputed sums due shall bear interest from day to day at the annual rate of 8% over the base lending rate of the Bank of England.
- 31.8 If the Customer/Participating Authority refuses to pay the outstanding undisputed payments to the Supplier, then the Supplier will be able to terminate the Individual Contract after a period of ninety (90) days of the date of such written notice.
- 31.9 Where a Contract Period is specified in the Individual Contract then the Individual Contract shall come to an end at the end of such Period (if it has not already come to an end or been terminated before that date).
- 31.10 All termination or coming to an end of this Individual Contract shall be without prejudice to any claims for prior breach of this Individual Contract and all of the conditions which expressly or impliedly have effect after termination of this Individual Contract for any reason will continue to be enforceable notwithstanding such termination or coming to an end.

Framework Agreement

- 31.11 Individual Contracts will continue to run even if the Framework Agreement is terminated unless terminated by the Customer/Participating Authority under this Clause 31 Termination.

Termination by the Supplier

- 31.12 The Supplier shall have the right to terminate the Individual Contract /Purchase Order, by giving ninety (90) days' notice:

Consequences of Termination

- 31.13 Where the Customer/Participating Authority terminates the Individual Contract for Material Default in accordance with its termination rights set out in this clause 31 and then makes other arrangements for the supply of the products the Customer/Participating Authority may recover the reasonable one-off costs, from the original Supplier, incurred to make those arrangements. Where the Individual Contract is terminated for Material Default no further payments shall be payable to the Supplier by the Customer/Participating Authority, until the Customer/Participating Authority has established the final cost for making these arrangements.

Special Term 9 - For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that the Supplier shall be entitled to revise its charges where pursuant the clause 33 there is a change to data

protection related obligations and whilst the actual increase in any changes would be as mutually agreed by the Supplier and Customer/Participating Authority, the Customer/Participating Authority does not dispute that the Supplier has the right to request an increase in its charges where such a change has a material impact upon its costs.

Special Term 10 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that no manufacturer warranties are assigned to the Customer/Participating Authority and as such clause 34 is disapplied.

Special Term 11 - For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that no leases are required for the Customer/Participating Authority and as such clause 35 is disapplied.

Special Term 12 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that clause 36.2 is revised to read as follows:

Any new IPR created specifically for the purpose of the Individual Contract, is owned by the Supplier. The Supplier gives the Customer/Participating Authority a licence to use any existing IPRs and new IPRs for the purpose of fulfilling its obligations during the Individual Contract Period.

Special Term 13 - For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that the Supplier shall be entitled to revise its charges in a change in law scenario envisaged by the provisions of clause 37 and whilst the actual increase in any changes would be as mutually agreed by the Supplier and Customer/Participating Authority, the Customer/Participating Authority does not dispute that the Supplier has the right to request an increase in its charges where a change in law does have a material impact upon its costs.

Special Term 14 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed by the parties that any technical support required by the Individual Contract is limited to that stated in Supplier's Service Charter

Special Term 15 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed by the parties that the Customer/Participating Authority right of set-off pursuant to clause 44, shall be limited to the set-off of any charges due under this Individual Contract and no other contract, if any, existing between the parties.

Special Term 16 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed by the parties that the Supplier may sub-contract the operational services within the scope of this Individual Contract to Pay360 Limited.

SCHEDULE 1 –**PART 1 - DATA PROTECTION**

Subject matter	Transactional Payment Processing
Duration of the processing activity	Transaction processing is transient at the point of time of the transaction, but our policy is to retain the transaction data to support international payment card scheme defined chargeback timescales, or, if card on file is requested by a cardholder via a merchant or organisation, for the duration of the validity of the card. The duration of the processing is therefore for the duration of the Agreement plus the chargeback period for individual transactions. This would mean, for example, that if there was a transaction on the final day of an agreement that transaction data would be retained for the duration of the chargeback period.
Nature and purpose of the processing activity	The nature and purpose of the processing is to enable data subjects to make payments for goods and services by facilitating the payment processes between the data subject, the relevant merchant or organisation providing the goods or services and the associated components of the wider financial system including acquirers, banks and schemes.
Type of personal data processed	Personal data to support the payment for goods and services, including name, account details, and payment details associated with the transaction as defined by the merchant, organisation, acquirer, bank or scheme.
Categories of data subjects	Individuals who wish to make payments for goods and services.
Obligations and rights of the Merchant.	As defined in the terms in this Agreement.

PART 2 – APPROVED SUB-PROCESSORS

Name of Sub-processor	Registered office details
Pay360 Limited	The Old School, Stratford St Mary, Colchester CO7 6LZ

SCHEDULE 2 – THIRD PARTY TERMS

Not Applicable