

Health Family Single e-Commercial System Terms of Use

Health Family eCommercial System

Terms of Use

The Department of Health and Social Care (**DHSC**) and some organisations across the health system (Health Family) use the Health Family eCommercial System to advertise and manage procurement opportunities, manage contracts and manage supplier interaction. The Terms of Use set the policy on content and functionality of the system. Technical support and maintenance of the system is provided by Atamis Ltd.

1. Acceptance of Terms of Use

1.1 These Terms of Use between DHSC and the Supplier govern access and use of the Health Family eCommercial System (the **System**) by Registered Users.

1.2 The access or use of the System by Registered Users, in any way, shall be deemed to constitute acknowledgment, acceptance and confirmation of the Terms of Use without further action.

1.3 The aim of the System is to provide Supplier information which can then be accessed by members of the Health Family for the purposes of DHSC and members of the Health Family to undertake:

- a) procurement exercises;
- b) market engagements;
- c) activity relating to commercial contracts; and
- d) any supply chain management activity.

(together referred to as **Services**).

1.4 The Registered Users shall only use the System to engage in the Services in accordance with these Terms of Use and any further rules expressed and presented in the System. In the event that there is any conflict between these Terms of Use and any such further rules, then the provisions of such further rules shall take precedence over these Terms of Use.

1.5 The System enables the Supplier to complete and submit responses to a range of procurement requirements and related information to help DHSC and members of the Health Family with supply chain management including, but not limited to on sustainability, information security/assurance, Supplier policies, SME supply chain spend, contracts used, product and service standards as well as providing the Supplier with the ability to create a Profile. The Profile will also be updated with information taken from SQs.

1.5 DHSC and all members of the Health Family shall have access to a Supplier's submitted Profile including all SQ information.

1.6 The System is provided by Atamis Ltd (referred to as **Atamis**) and licensed to DHSC and participating members of the Health Family. These Terms of Use (amongst other matters) govern access to and the use of the System by Registered Users. The Supplier acknowledges that by accessing the System, the Supplier agrees to be bound by these Terms of Use.

Health Family Single e-Commercial System Terms of Use

2. Access

- 2.1 DHSC grants to the Supplier, free of charge, access to the System (via the Registered Users) for the purpose of providing organisational information about the Supplier which will be uploaded stored and retrieved from the System by DHSC and members of the Health Family (and their respective users) and for engaging in the Services, in each case subject to these Terms of Use.
- 2.2 The level of access by a member of the Health Family (and its users) to the System and the Supplier information contained in it may be varied from time to time by DHSC in accordance with any other arrangements entered into between DHSC and particular member of the Health Family.
- 2.3 DHSC in its absolute discretion reserves the right to suspend or remove the Supplier or individual Registered Users access to the System (and/or to block or remove access to some or all of the Supplier's details contained in it) without notice for technical or legal reasons at any time.

3. Registration

Individual Users

- 3.1 To be granted access to the System, the Supplier must register each person which they wish to be a Registered User by providing the required registration data.
- 3.2 Login and password are strictly personal to the Registered User and non-transferable. Registered Users shall ensure they do not divulge or disclose their password to third parties. In the event that the Supplier or any of its Registered Users become aware that a password may have been divulged, disclosed or discovered by any third party, they shall immediately notify the Atamis Helpdesk.

User Manager

- 3.3 Each apply to be treated as a "User Manager and shall:
- 3.3.1 be responsible for the authorisation and acceptance of new users to the organisation's account; and
- 3.3.2 be responsible for the management of all Registered Users' accounts authorised by him/her. In the event that a Registered User leaves an organisation, their account should be disabled within the system by a User Manager.

4. Invitation to Participate and Involvement in Services

- 4.1 DHSC or a member of the Health Family shall send, through the System, invitations to participate in specific procurement exercises to appropriate suppliers that have registered and been activated on the System as described in these Terms of Use. Data and information relating to a specific procurement exercise shall be made available to invited suppliers.
- 4.2 DHSC or a member of the Health Family shall configure the System as appropriate for each procurement exercise. The selected configuration settings for a procurement exercise shall be displayed on the System for invited Suppliers to view. The Supplier

Health Family Single e-Commercial System Terms of Use

acknowledges participation by one of its Registered Users in a procurement exercise on the System, constitutes its agreement to be bound by those configuration settings. The Supplier recognises that by one of its Registered Users participating in a procurement exercise on the System, all other Registered Users within the Supplier account will have access to the procurement exercise.

4.3 All material issued through the System in connection with a procurement shall remain the property of DHSC or the relevant member of the Health Family and shall be used only for the purpose of the procurement.

4.4 In addition to procurement exercises, DHSC or a member of the Health Family may grant permission to the Supplier to access the System for market engagements and engage in activity relating to commercial contracts that have been awarded to the Supplier.

5. Supplier's specific obligations on use of the System

5.1 The Supplier (through its Registered Users) shall ensure that it shall comply with these Terms of Use (as updated from time to time on the Health Family eCommercial System website) and any additional terms notified via the System. In the event that there is any conflict between these Terms of Use and any such additional terms, then the provisions of such additional terms shall take precedence over these Terms of Use.

5.2 The Supplier shall use all reasonable care and skill in performing its obligations under these Terms of Use.

5.3 The Supplier shall provide its Registered Users with the equipment and software needed to access and use the System.

5.4 The Supplier shall use best endeavours to protect the System from viruses introduced as a result of access and use by its Registered Users.

5.5 The Supplier shall use the System for lawful and proper purposes only and shall, in any event, comply with all relevant laws, regulations and codes of practice within the UK or other jurisdiction from which its Registered Users access the System.

5.7 The Supplier agrees that its Registered Users shall act as authorised agents for and on behalf of the Supplier in submitting and updating organisation information and any response to any invitation to participate in a procurement exercise on the System and/or other market engagements, when engaging in activity relating to commercial contracts that have been awarded to the Supplier and for any supply chain management actions required by DHSC or a member of the Health Family.

5.8 The Supplier shall be responsible for any unauthorised, false or fraudulent information that is submitted or response to any invitation to participate in a procurement that is submitted/or involvement in other activity relating to marketing engagement/commercial contracts using one of its Registered Users login and password.

5.9 The Supplier represents and warrants that the information it provides under these Terms of Use will be as accurate and complete as possible and shall accurately represent the Supplier's capabilities. Where estimated or approximate data is provided

Health Family Single e-Commercial System Terms of Use

by the Supplier, the Supplier shall explain the nature of the data provided as part of the data collection process if required by DHSC or a member of the Health Family.

6. General Provisions for the Submission of Responses

- 6.1** Suppliers are expected to examine all of the file attachments published in the System, which indicate what information must be provided. Suppliers must provide all of the items of information requested in the procurement exercise. Incomplete submission of the information requested including the submission of information in file attachments containing viruses that have been advised by the System shall entitle DHSC or a member of the Buyer Community to invalidate or reject the response to the procurement exercise.
- 6.2** All responses to any invitation to participate in a procurement exercise must be submitted through the System by the closing date and time as specified on the System.
- 6.3** Responses may be submitted through the System at any time up to the closing date and time as specified on the System.
- 6.4** The Supplier must submit responses in accordance with the instructions in the invitation to tender and any explanatory documentation or guidance.
- 6.5** Responses will be opened by DHSC or the relevant member of the Health Family in accordance with the opening procedures specified on the System for each procurement exercise.

7. Use of Procurement Categories

- 7.1** The Supplier may choose to identify Procurement Categories in its Profile within the System. These are a means by which the Supplier can identify categories that it can provide business in.
- 7.2** DHSC and/or the members of the Health Family may use the Procurement Categories to identify suppliers that might have an interest in a particular requirement, and to alert them to any upcoming opportunities.
- 7.3** The Supplier acknowledges that DHSC and any member of the Health Family does not guarantee that the Supplier will be specifically invited to tender for each and every requirement related to a Supplier's Procurement Categories. The Supplier acknowledges that it retains responsibility for checking official e-Notification services such as the Contracts Finder and Find a Tender services (and other such information sources, such as the Official Journal of the European Union (if relevant)) and identifying upcoming opportunities of interest for itself.

8. Intellectual property rights

- 8.1** All Intellectual Property Rights in the System are owned by, or are under licence to, DHSC, members of the Health Family and/or Atamis.
- 8.2** The Supplier and its Registered Users shall have no Intellectual Property Rights in the System, nor shall it have any rights to copy, adapt, modify or interfere with the System.
- 8.3** The System may include DHSC, members of the Health Family and/or Atamis' logos and/or trademarks. The Supplier acknowledges that it and Registered Users may not copy or make other use of such logos and/or trademarks without written prior consent.

Health Family Single e-Commercial System Terms of Use

9. Data protection

- 9.1 In its use and access of the System, the Supplier and Registered Users shall comply with the Data Protection Legislation and all relevant regulations together with any codes of conduct and guidance issued by the Information Commissioner from time to time and they shall not do or cause or permit to be done anything which may cause or otherwise result in a breach by DHSC, a member of the Health Family or Atamis of the same.
- 9.2 All personal data information provided from individual Registered Users will be processed according to the Health Family eCommercial System [Privacy Policy](#).

10. Freedom of Information

- 10.1 Where DHSC or a member of the Health Family may be obliged to respond to a request for information or an apparent request for information under the Code of Practice on Access to Government Information, the Freedom of Information Act 2000, the Environmental Information Regulations 2004, or similar regulations, DHSC or a member of the Health Family shall be permitted to offer such assistance to and disclose such information to the relevant authorities as they advise DHSC or the relevant member of the Health Family as is required from time to time.
- 10.2 Any personal data provided by individual Registered Users will be processed according to the Health Family eCommercial System [Privacy Policy](#).

11. Limitation of liability

- 11.1 Nothing in these Terms of Use shall be construed so as to exclude or limit liability for death or personal injury or for fraud or fraudulent misrepresentation or for any other liability which it would not be not lawful to so exclude or limit.
- 11.2 In no event shall the DHSC, a member of the Health Family, Atamis be liable to any Supplier or to a Supplier's User for any loss or damages incurred by that person arising from the use of the System caused by:
- 11.2.1 an event of Force Majeure that affects the availability and/or performance of the System;
 - 11.2.2 incorrect use by Users of the System;
 - 11.2.3 connectivity failures in respect of the equipment used by the Users;
 - 11.2.4 breakdown of the System;
 - 11.2.5 breach of these Terms of Use other than by DHSC, a member of the Health Family or Atamis.
- 11.3 In no event shall DHSC, a member of the Health Family or Atamis be liable to any Supplier or Supplier's User for any indirect or consequential loss (including without limitation reputational, contingent and/or speculative losses of any kind).

Health Family Single e-Commercial System Terms of Use

- 11.4** In no event shall DHSC, a member of the Health Family or Atamis be liable to the Supplier or a Registered User for any sum (in aggregate) greater than the greatest sum paid by such person to DHSC, a member of the Health Family, or Atamis under the provisions of these Terms of Use in any 12 month period of use of the System (and in the event such sum is zero or otherwise less than 100 GBP then the maximum liability shall be 100 GBP).
- 11.5** The Supplier acknowledges and accepts that:
- 11.5.1** DHSC and/or Atamis reserve the right to interrupt and/or suspend the availability of the System and/or revoke access at any time without incurring any liability;
- 11.5.2** DHSC and/or Atamis provide the System on an 'as is' basis and 'as available' basis without any warranty of any kind; and
- 11.5.3** DHSC and/or Atamis do not accept any liability for any information or links on the System that may refer Users to external sources.
- 11.6** The Supplier agrees to indemnify DHSC, members of the Health Family and Atamis in full against all claims, demands, actions or proceedings (including legal and other professional adviser fees) made by any third party arising out of or in relation to breach of its obligations under these Terms of Use.
- 11.7** DHSC does not warrant that the functions contained in the material held in the System will be uninterrupted or error free, that defects will be corrected, or that the System or the server that makes it available are free of viruses or bugs or represents the full functionality, accuracy, reliability of the materials.

12. Rights of third parties

These Terms of Use shall not create any rights that shall be enforceable by anyone other than DHSC, relevant members of the Health Family and the Supplier, except that terms 1, 2, 4, 5, 8, 9, 11 and 12 may be enforced directly by Atamis.

13. Amendments to this agreement

- 13.1** The Supplier acknowledges that DHSC reserves the right to vary or amend these Terms of Use by publication of an updated version of these Terms of Use or notification or message on the System or through an email or letter to the Supplier, using the email address or postal address provided on their Profile.
- 13.2** The amendments shall be deemed to have been accepted unless DHSC receives, within seven (7) days of the date of the publication or notice under clause 13.1, a written communication from the Supplier expressing refusal of the amendments and its intention to cease further use of the System within the following thirty (30) days (in which case the agreement for the use of the System between DHSC and the Supplier shall terminate without further liability on either side upon such cessation (other than for breaches prior to the date of such termination)).
- 13.3** In any case, the Supplier's continued or recommenced use of the System after such a thirty (30) day period shall represent its unconditional acceptance of the amendments in its entirety (notwithstanding any expressed refusal of the amendments and intention to withdraw).

Health Family Single e-Commercial System Terms of Use

14. General

- 14.1** The waiver by either party of any breach of these Terms of Use shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 14.2** If at any time any part of these Terms of Use is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from these Terms of Use and the validity and/or enforceability of the remaining provisions of these Terms of Use shall not in any way be affected or impaired as a result of that omission.
- 14.3** DHSC and the Supplier acknowledge that, for the entire duration of a procurement exercise (and for the purposes of any procurement exercises undertaken by members of the Health Family), any dates and times shall be those displayed on the System and any other Helpdesk recording and telecommunications equipment, and such recordings shall represent a full account of the actual facts and circumstances.
- 14.4** The Supplier acknowledges that the System will not allow it to view the identity of the other suppliers during and after a procurement exercise and similar restrictions may also apply to market engagements and other actions under the System.

15. Law and jurisdiction

These Terms of Use and any dispute or claim arising out of or in connection with them shall be governed by, and construed in accordance with, the laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales to which the parties irrevocably submit.

16. Interpretations

- 16.1** The headings to clauses are inserted for convenience only and shall not affect the interpretation or construction of these Terms of Use.
- 16.2** Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.
- 16.3** The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- 16.4** References to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).
- 16.5** All references in these Terms of Use to Clauses are to the clauses to these Terms of Use and references to Sections are to sections of these Terms of Use unless otherwise stated.

17. Definitions

For the purposes of these Terms of Use the following definitions shall apply:

Health Family Single e-Commercial System Terms of Use

'Confidential Information' means secret, confidential, commercial, financial, marketing, technical or other information, knowhow, trade secrets and other information in any form or medium whether disclosed orally or in writing before or after the date of these Terms of Use, together with any reproductions of such information in any form or medium or any parties of this information.

'Data Protection Legislation' means:

- i) all applicable law about the processing of personal data and privacy; and
- ii) The Data Protection Act 2018, the General Data Protection Regulation (Regulation 2016/679), the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 including if applicable legally binding guidance and codes of practice issued by the Information Commissioner; and
- iii) to the extent that it relates to processing of personal data and privacy, any laws that come into force which amend, supersede or replace existing laws including the General Data Protection Regulation, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time including the Data Protection Act 2018.

'Force Majeure' means any cause affecting the performance by either DHSC, a member of the Health Family or Atamis of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof), endemic, pandemic, governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees or the failure of either DHSC or Atamis to perform its obligations under these Terms of Use;

'Intellectual Property' means any patent, copyright, database right, moral right, design right (whether registered or unregistered), trademark, service mark, domain name, know-how, utility model, unregistered design or, where relevant, any application for any such right, or other industrial or intellectual property right.

'Health Family' means all the buyer organisations consisting of DHSC companies, arms' length bodies and NHS organisations whose organisations are indicated within the landing page of the System, who have registered with the DHSC to use the System; and **"member of the Health Family"** shall be construed accordingly;

'Helpdesk' means the facility provided by Atamis Ltd to handle support queries and issues raised by Users;

'Procurement Categories' shall mean those categories of goods and/or services which the Supplier has identified in the Supplier's Profile in the System as being goods and/or services that Supplier would be interested in supplying;

Health Family Single e-Commercial System Terms of Use

'Profile' consists of basic information about a Supplier organisation including Procurement Categories information, delivery locations, financials including accounts or statements of turnover and insurance certificates and other relevant information that the System allows to be included from completed SQs of the Supplier;

'Services' has the meaning as given under clause 1.3;

'SQ' means the selection questionnaire available through the System, based on the Crown Commercial Service's standard selection questionnaire, and that has been adapted by DHSC or a member of the Health Family for use through the System;

'Supplier' means an organisation that has indicated its acceptance to be bound by these Terms of Use;

'System' has the meaning given under clause 1.1;

'Registered User' or **'User'** means an individual who has registered for and on behalf of the Supplier to access the System and has agreed to be bound by these Terms of Use;