

# Health Single e-Commercial System

## Terms of Use – Registered User

### Health eCommercial System

#### Terms of Use for supplier users who are registered users

The Department of Health and Social Care (**DHSC**), its companies, arm's length organisations and NHS organisations across the health system (**Health Family**) use the Health eCommercial System (**System**) to advertise and manage procurement opportunities, manage contracts and manage Supplier interaction. The System is provided by Atamis Ltd (**Atamis**) and licensed to DHSC and participating members of the Health Family. Technical support and maintenance of the System is provided by Atamis.

This page (**Terms of Use**) sets out the terms and conditions for registered users (each a "**Registered User**") accessing and using the Public Website.

Terms defined in these Terms of Use like (**This**) or ("**this**"), or similar, have the meanings given to them, in addition to the terms which are defined in condition 17 (Definitions). Terms defined in these Terms of Use have the meaning given to them wherever they are used in these Terms of Use, even if the definition is at the end of these Terms of Use and the term is used earlier in the text. Terms defined in the All User TOUs have the same meaning wherever they are used in these Terms of Use.

#### 1. Acceptance of Terms of Use

- 1.1 You must agree to these Terms of Use to access and use the System as a Registered User. You agree to be bound by, and must observe and comply with, these Terms of Use at all times when using the System.
- 1.2 Access to and use of the System by each Registered User, in any way, shall be subject to you at all times observing and complying with these Terms of Use and with the terms of use at [Health Family eCommercial System Terms of Use \(All User TOUs\)](#), and any further rules expressed and presented in the Portal. In these Terms of Use, "TOUs" refers collectively to these Terms of Use, the All User TOUs and such further rules. In the event that there is any conflict between any such further rules, these Terms of Use and the All User TOUs, the order of precedence shall be: the further rules, these Terms of Use, and the All User TOUs.
- 1.3 The aim of the parts of the Public Website which are available to Registered Users (Portal) is to support DHSC and members of the Health Family with undertaking the following, including in relation to sustainability, information security/assurance, Supplier policies, supply chain spend, contracts used, and product and service standards:
  - a) recording Profiles of Suppliers;
  - b) procurement exercises;
  - c) market engagements;
  - d) activity relating to commercial contracts; and
  - e) any supply chain management activity,

(together referred to as **Services**), by enabling Registered Users, subject at all times to condition 1.4, to complete and submit responses to a range of procurement requirements, information about the relevant Supplier, and related information (**Primary**

## **Health Single e-Commercial System Terms of Use – Registered User**

**Use Purpose**) for storage and subsequent retrieval and use of such responses and information (**Supplier Information**) by DHSC and members of the Health Family.

- 1.4** The Registered Users shall only use the Portal to engage in the Services (on the basis described below in this condition 1.4) in accordance with the TOUs. Registered Users may engage in the Services only on behalf of the organisation that employs or retains them, such organisation being a bidder or supplier for the purposes of the procurement, engagement, contract or management activity being conducted by DHSC or the relevant member of the Health Family using the Services.
- 1.5** DHSC and all members of the Health Family shall have access to a Supplier's submitted Profile including all SQ information. The Profile for each Supplier may be updated by DHSC or any member of the Health Family with information taken from any SQs.

### **2. Access**

- 2.1** DHSC grants to each Registered User access to the Portal for the Primary Use Purpose, subject at all time to the TOUs.
- 2.2** The level of access to the System, Portal and Supplier Information that is available to the users of any member of the Health Family may be varied from time to time by DHSC in accordance with any other arrangements entered into between DHSC and the particular member of the Health Family.
- 2.3** Without limiting condition 11 of the All User TOUs, DHSC in its absolute discretion reserves the right to temporarily or permanently suspend and/or block and/or remove and/or limit and/or change:
  - 2.3.1** any Registered User's access to the Portal, or the access to the Portal of all Registered Users of any particular Supplier; and/or
  - 2.3.2** some or all of the Profile or other information relating to the relevant Supplier, at any time, without notice, for any reason including technical or legal reasons.
- 2.4** DHSC and/or Atamis are committed to combatting fraud and economic crime and may use the information on the System (including the Portal), as well as any other information received or held about a Supplier, to conduct audits to detect, prevent and investigate misuse or fraud in any of our systems or processes. We may make data relating to all applications available to bodies responsible for auditing and administering public funds for the purposes of preventing and detecting fraud. Your information may also be disclosed to partner organisations such as the NHS Counter Fraud Authority and DHSC Anti-Fraud Unit or other external bodies such as the Police in relation to the detection of crime and may be used in data matching exercises. Each of those organisations will have the right to use any information provided for the purposes of preventing, investigating, and tackling fraud and economic crime. Registered Users/Suppliers will not be notified in advance of any such information processing/sharing.

### **3. Registration and Registered User accounts**

- 3.1** To be granted a Registered User account and access to the Portal, each Registered User must input into the Portal all of the registration data that is requested by the Portal.

## **Health Single e-Commercial System Terms of Use – Registered User**

- 3.2** Login and password are strictly personal to the Registered User and non-transferable. Each Registered User shall not disclose to or otherwise share their password with any other person. If any of Registered User becomes aware that any user account or password may have been compromised, they shall immediately notify the Helpdesk.
- 3.3** Any Registered User who is employed or retained by a Supplier may nominate themselves on behalf of the Supplier it represents to be allocated management privileges within the Portal (each a “**User Manager**”). Each User Manager shall be responsible for:
  - 3.3.1** the allocation of Registered Users to the [Profile] for the relevant Supplier (being, collectively for a given Supplier, the “**Managed Registered Users**”); and
  - 3.3.2** the management of all Managed Registered User accounts for the relevant Supplier; and
  - 3.3.3** disabling the Registered User accounts of Managed Registered Users who cease to be employed or retained by the relevant Supplier.
- 4. Invitation to Participate and Involvement in Services**
  - 4.1** DHSC, or any member of the Health Family shall send to the Managed Registered Users of selected Suppliers, through the Portal, invitations for the relevant Suppliers to participate in specific procurement exercises.
  - 4.2** DHSC or any member of the Health Family shall configure the Portal as appropriate for each procurement exercise that it initiates. The selected configuration settings for a given procurement exercise shall be displayed on the Portal for the Managed Registered Users of invited Suppliers to view. Participation by any one of the Managed Registered Users of a given Supplier in a procurement exercise on the Portal shall:
    - 4.2.1** be deemed to indicate the Registered User’s agreement (on behalf of itself, its Supplier and all other Managed Registered Users of that Supplier) to be bound by those configuration settings; and
    - 4.2.2** result in all other Managed Registered Users of that Supplier having access to the procurement exercise.
  - 4.3** In addition to procurement exercises, DHSC or a member of the Health Family may grant permission to the Managed Registered Users for any Supplier to access the Portal for market engagements, or engage in activity relating to commercial contracts that have been awarded to the Supplier, or for the purposes of engaging in relation to other Services.
- 5. Supplier's specific obligations on use of the Portal**
  - 5.1** Each Registered User shall (and shall ensure that its Supplier and each of its other Registered Users shall):
    - 5.1.1** use all reasonable care and skill in observing, complying with and performing its obligations under, the TOUs;
    - 5.1.2** use compatible equipment and software (in each case that meets or exceeds the minimum system requirements specified on the Public Website) to access and use the Portal;.

## **Health Single e-Commercial System Terms of Use – Registered User**

- 5.1.3** use best endeavours to protect the Portal, the System and the Facilities from Viruses;
- 5.1.4** not use the Portal unless it is authorised by the relevant Supplier to use the Portal for and on behalf of the Supplier, and shall not use the Portal (provided that the Supplier's instructions comply with the TOUs) except within the scope of such authorisation and in accordance with the Supplier's instructions; and
- 5.1.5** be personally responsible for any unauthorised, false or fraudulent information that is submitted using its Registered User account in the Portal.
- 5.2** Each Registered User represents and warrants (as a continuing warranty that is repeated on each day that its Registered User account subsists) that the information it has uploaded to the Portal is accurate, and as complete as possible, and accurately represents the Supplier's capabilities. Where estimated or approximate data is provided, the Registered User shall explain (as part of its upload) the nature of the data provided if required by DHSC or any member of the Health Family.
- 6. General Provisions for the Submission of Responses**
- 6.1** Each Registered User is expected to examine all of the file attachments uploaded to the Portal for its Supplier, which indicate what information must be provided. Each Registered User must provide all of the items of information requested in the procurement exercise or other Service. Incomplete or Virus-infected uploads shall entitle DHSC or any member of the Health Family to invalidate or reject the responses given on behalf of the relevant Supplier to the procurement exercise or Service, in their entirety.
- 6.2** All responses to any invitation to participate in a procurement exercise must be submitted through the Portal before the closing date and time as specified on the Portal.
- 6.3** Responses may be submitted through the Portal at any time up to the closing date and time as specified on the Portal.
- 6.4** Responses must be submitted 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(s) of the Health Family in accordance with the opening procedures specified on the Portal for each procurement exercise.
- 7. Use of Procurement Categories**
- 7.1** The User Manager may choose to identify Procurement Categories in the Profile for its Supplier within the Portal.
- 7.2** DHSC and any 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** Each Registered User acknowledges (on behalf of itself and its Supplier) that each of DHSC and the members of the Health Family does not guarantee that the relevant Supplier will be invited to tender for each and every requirement related to the Procurement Categories specified in its Profile. Each Registered User acknowledges

## **Health Single e-Commercial System Terms of Use – Registered User**

(on behalf of itself and its Supplier) 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, including 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 Content uploaded to the Portal by DHSC or any member of the Health Family in connection with any Services (**Health Uploads**) are and shall belong to and vest in the organisation (being DHSC or the relevant member of the Health Family) which uploaded or caused the Content to be uploaded to the Portal. Each Registered User acknowledges and agrees that all Health Uploads are confidential and shall ensure that its Supplier treats them as such.
- 8.2** All Intellectual Property Rights in the Portal, the System and the Facilities are owned by, or are under licence to, DHSC, members of the Health Family and/or Atamis and its licensors. Each Registered User acknowledges and agrees that the Portal, the System, the Facilities, and all related functional and non-functional specifications, configurations, technical and user documentation, source code and object code are confidential and shall ensure that its Supplier treats them as such.
- 8.3** No Registered User (or its Supplier) shall have or acquire any Intellectual Property Rights whatsoever in the Health Uploads, the Portal, the System or the Facilities, nor shall it (or its Supplier) have any right to copy, adapt, modify, create versions of, reverse engineer, integrate with or otherwise interfere with the Portal, the System or the Facilities, or any right to use the Portal other than the right granted in the TOUs (which shall be construed narrowly in this respect).
- 8.4** The Content in the Portal may include the registered or unregistered trade marks of DHSC, members of the Health Family and/or Atamis. Each Registered User acknowledges that it shall not (and its Supplier shall not) copy or otherwise use any such trade marks without written prior consent.

### **9. Data protection**

- 9.1** In relation to use of and access to the Portal, each Registered User shall observe and comply with the Data Protection Legislation, and shall not do or cause or permit to be done anything which may cause or otherwise result in any failure to observe or comply with Data Protection Legislation on the part of DHSC, any member of the Health Family or Atamis.

### **10. Freedom of Information**

- 10.1** Each Registered User acknowledges (on behalf of itself and its Supplier) that DHSC or any member of the Health Family shall be entitled to disclose any Content in response to any 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, and DHSC or the relevant member of the Health Family shall decide in its absolute discretion whether and to what extent any exemptions may apply.

### **11. Limitation of liability**

**Health Single e-Commercial System**  
**Terms of Use – Registered User**

- 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** Except as stated in condition 11.1 above, to the fullest extent permitted by law each of DHSC, the members of the Health Family and Atamis excludes and shall have no liability whatsoever to or in respect of any Registered User (or its Supplier) for or in relation to any breach of contract, breach of any duty of care (including negligence), breach of statutory duty or otherwise for or in respect of:
- 11.2.1** any event of Force Majeure that affects the Portal in any way including its availability and/or performance;

## **Health Single e-Commercial System Terms of Use – Registered User**

- 11.2.2** use or misuse of the Portal by any Registered User;
  - 11.2.3** connectivity failures in respect of the equipment and services used by the Registered Users;
  - 11.2.4** any error with or failure of (including unavailability of) the Portal; or
  - 11.2.5** any breach of any TOUs other than by DHSC, a member of the Health Family or Atamis.
- 11.4** The aggregate liability of each of DHSC, the members of the Health Family and Atamis, to any Registered User (and its Supplier) whether in contract, tort (including negligence), for breach of statutory duty or otherwise, arising out of or in connection with the Services, the Portal, the System, the Facilities and the TOUs, shall in no circumstances exceed 100 GBP.
- 11.5** Each Registered User acknowledges and agrees (on behalf of itself and its Supplier) that:
- 11.5.1** DHSC and/or Atamis reserve the right to interrupt and/or suspend the availability of the Content, the Services, the Portal, the System and/or the Facilities, and/or revoke access at any time without incurring any liability;
  - 11.5.2** DHSC and/or Atamis provide the Services, the Portal, the System and the Facilities on an 'as is' basis and 'as available' basis, as described in condition 14.1 of the All User TOUs without any representations, guarantees, undertakings or warranties of any kind (whether express or implied); and
  - 11.5.3** DHSC and/or Atamis do not accept any liability for any Content, or any information or links on the Portal that may refer Registered Users to external sources.
- 11.6** Each Registered User agrees to indemnify DHSC, each member of the Health Family and Atamis in full against all claims, demands, actions or proceedings (including legal and other professional adviser fees and expenses) made by any third party arising out of or in relation to any failure on the part of the Registered User to observe and comply with (and ensure its Supplier observes and complies with) the TOUs.
- 11.7** DHSC does not warrant that the Services, the Portal or the Facilities will be uninterrupted or error free, that they are free of Viruses, errors, bugs or other defects, or that defects will be corrected.

## **12. Rights of third parties**

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

## **13. Changes to these Terms of Use**

- 13.1** The Registered User acknowledges that DHSC reserves the right to vary or amend these Terms of Use at any time without notice by publication of an updated version of these Terms of Use or notification or message given in or via the Portal or through an email or letter to the Registered User, using the email address or postal address provided on their Portal Profile.

## **Health Single e-Commercial System Terms of Use – Registered User**

**13.3** If the Registered User continues to use the Portal after these Terms of Use are updated, the Registered User will be deemed to accept the changes. If the changes are made without notice from DHSC, they will apply from the date of the Registered User's first login to the Portal following the changes. If DHSC informs the Registered User (or Registered Users generally) about the changes, the changes will apply from the date on which DHSC informs the Registered User(s).

### **14. General**

**14.1** The waiver 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** For the entire duration of each procurement exercise forming part of the Services, any dates and times shall be those displayed on the Portal.

**14.4** Each Registered User acknowledges that the Portal will not allow it to view the identity of the suppliers other than its own Supplier during and after any procurement exercise, and similar restrictions may also apply in the context of market engagements and other Services.

### **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. Interpretation**

**16.1** The headings to conditions in these Terms of Use 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 or partnership.

**16.3** The words and phrases "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 conditions are, unless stated otherwise, to the conditions of these Terms of Use.



## Health Single e-Commercial System Terms of Use – Registered User

### 17. Definitions

For the purposes of these Terms of Use the following definitions have the following meanings:

**“Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation (EU) 2016/679 as incorporated into, amended and applied under English law; the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), together with any statutory codes and other guidance issued by the Information Commissioner from time to time;

**“Force Majeure”** means any event, act, omission, happening or non-happening, beyond the reasonable control of the DHSC, each member of the Health Family or Atamis, that affects or may affect their performance including but not limited to 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;

**“Intellectual Property Rights”** means any patents, utility models, rights to inventions, copyright and neighbouring and related rights, database rights, rights in computer software, moral rights, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, design rights, trade marks and service marks, business names, domain names, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all rights to apply for and be granted any such rights, renewals or extensions of them, and all similar or equivalent rights which subsist now or in the future in any part of the world;

**“Helpdesk”** means the facility provided by Atamis to handle requests for support raised by Registered Users in relation to the Portal;

**“Procurement Categories”** shall mean the categories of goods and/or services the Supplier has identified on their Profile in the System as being the goods and/or services they would be interested in supplying;

**“Profile”** means the supplier’s Profile which consists of basic information about the Supplier organisation, including Procurement Categories information, delivery locations, financials (including accounts or statements of turnover), insurance certificates and other relevant information that the Portal allows to be included from completed SQs of the Supplier;

**“Selection Questionnaire”** or **“SQ”** means the template and completed selection questionnaire(s) stored in the Portal, based on the Crown Commercial Service’s standard selection questionnaire, and that has been adapted by DHSC or the relevant member of the Health Family for use in the Portal; and

**“Supplier”** means an organisation whose employees or other retained staff use the Portal for and on its behalf in connection with its supplies of goods and/or services to DHSC or members of the Health Family.