

USER AGREEMENT (Defra eCommercial System Portal)

1. Introduction

1.1. This User Agreement governs the access and use of the eCommercial System (the System) by you, the Supplier, to respond to an invitation from [Defra/Natural England/ Centre for Environment, Fisheries and Aquaculture Science/ Agricultural and Horticultural Development Board/Marine Maritime Organisation/Animal Plant Health Agency/Environment Agency/Rural Payments Agency] (the Buyer) to participate in a procurement exercise.

1.2. A procurement exercise may include a Pre-Qualification Questionnaire (PQQ), Supplier Qualification (SQ) a Request for Information (RFI), an Invitation to Tender (ITT), an Invitation to Negotiate (ITN), an Invitation to Participate in Dialogue (ITPD), an Invitation to Submit Final Offer (ITSFO), Invitation to Submit Final Tender (ITSFT), a Best And Final Offer (BAFO), a Request for Proposal (RFP), a Request for Quotation (RFQ); an electronic Auction, Dynamic Purchasing System event (DPS) or an electronic Contract. This above list of individual procurement exercise processes is indicative and a non-exhaustive representation of commonly used terminology.

1.3. The System is provided by Atamis Limited and operated by the Buyer. This User Agreement applies to the Supplier's and its Supplier Users' access to and use of the System. The Supplier acknowledges that by a Supplier User accessing the System using the user ID and password provided by, or on behalf of the Buyer, the Supplier agrees to be bound by this User Agreement.

1.4. The Supplier shall only use the System to respond to an invitation to participate in a procurement exercise in accordance with this User Agreement and any further rules expressed and presented in the System. In the event that there is any conflict between this User Agreement and any such further rules, then the provisions of such further rules shall take precedence over this User Agreement.

2. Interpretation

2.1. The headings to clauses are inserted for convenience only and shall not affect the interpretation or construction of this User

Agreement.

2.2. 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.

2.3. 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.

2.4. 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).

2.5. All references in this User Agreement to Clauses are to the clauses to this User Agreement and references to Sections are to sections of this User Agreement unless otherwise stated.

3. Definitions

"Buyer" means [Defra/Natural England/ Centre for Environment, Fisheries and Aquaculture Science/Agricultural and Horticultural Development Board/Marine Maritime Organisation/Animal Plant Health Agency/Environment Agency/Rural Payments Agency]

"Force Majeure" means any cause affecting the performance by either the Buyer or Atamis of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limitation) government regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available.

"Helpdesk" means the facility provided by Atamis to handle support queries and issues raised by Supplier Users.

"Intellectual Property" means any patent, copyright, database right, moral right, design right (whether registered or unregistered), trade mark, 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.

"Supplier" means an organisation that has indicated its acceptance to be bound by this User Agreement.

"Supplier User" means an individual representing the Supplier that has registered and been provided with access to the System.

"System" means the eSourcing System provided for Suppliers to participate in procurement exercises.

"Working Days" means 09:00-17:00 Monday to Friday in the United Kingdom and excluding Bank Holidays.

4. Access

4.1. The Buyer grants to the Supplier, free of charge, access to the System by Supplier Users for the purpose of responding to any invitation to participate in a procurement exercise, subject to this User Agreement.

4.2. The Buyer reserves the right to deny access to the System by the Supplier and/or one or more Supplier Users by giving notice in writing to the Supplier if any of the following events occur:

a) The Supplier commits a material breach of any of its obligations under this User Agreement;
or

b) The Supplier fails to remedy, or persists in, any breach of any of its obligations under this User Agreement after having been notified in writing to remedy such breach within a period of ten (10) Working Days.

4.3. Without prejudice to any of the Buyer's other rights, the Buyer reserves the right to suspend access to the System without

notice for technical or legal reasons.

5. Registration

5.1. To be granted access to the System, the Supplier must register each person which the Supplier wishes to be a Supplier User by providing the required registration data and specifying a user ID and password.

5.2. User ID and password are strictly personal to the Supplier User and non-transferable. The Supplier accepts full responsibility for ensuring that its Supplier Users do not divulge or disclose their user ID or password to third parties. In the event that the

Supplier or a Supplier User becomes aware that a user ID and/or password may have been divulged, disclosed or discovered by any third party, they shall immediately notify the Helpdesk.

5.3. The Supplier shall designate an individual Supplier User to manage access to the System by other Supplier Users.

5.4. The Supplier must immediately inform the Helpdesk in the event that a Supplier User leaves its employment or no longer requires access to the System. The Buyer reserves the right to deactivate a Supplier User ID and password if there has been no access for a period of sixty (60) days.

6. Invitation to Participate

6.1. The Buyer shall send, through the System, an invitation to participate in a specific procurement exercise to appropriate

Suppliers that have registered and been activated on the System as described in the User Agreement. Data and information relating to a specific procurement exercise shall be made available to invited Suppliers.

6.2. The Buyer 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 acknowledges that by one of its

Supplier Users participating in a procurement exercise on the System, the Supplier agrees to be bound by these configuration settings.

6.3. All material issued through the System in connection with this procurement shall remain the property of the Buyer and shall be used only for the purpose of this procurement.

7. Supplier's Obligations

7.1. The Supplier shall ensure that all its Supplier Users comply with this User Agreement.

7.2. The Supplier shall use all reasonable care and skill in performing its obligations under this User Agreement.

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

7.4. The Supplier shall provide software to ensure the security of the System and use best endeavours to protect the System from viruses when being accessed and used by its Supplier Users.

7.5. 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 Supplier Users access the System.

7.6. In particular, the Supplier agrees that it will not:

a) cause or permit any other person who is not an authorised Supplier User to access the System using any Supplier User's ID and password;

b) attempt to gain access to any part of the System which is restricted, including, without limitation, parts of the system normally only accessible to the Buyer;

c) attempt to log on to the System as any other Supplier, attempt to access or view documents or information concerning other Suppliers or otherwise interfere with a tender submitted by any other Supplier;

d) manipulate any information supplied on the System in a manner that would lead to inaccurate, misleading or discriminating presentation of information being displayed;

e) post, transmit or disseminate any information on or via the System which is or may be harmful, obscene, defamatory or otherwise illegal;

f) use the System in a manner which causes or may cause an infringement of the rights of any other;

g) use any software, routine or device to interfere or attempt to interfere electronically or manually with the operation or functionality of the System, including uploading or making available files containing corrupt data or viruses via whatever means;

or

h) attempt to alter or modify the System in any way.

7.7. The Supplier agrees that its Supplier Users shall act as authorised agents for and on behalf of the Supplier in submitting any response to any invitation to participate in a procurement exercise on the System.

7.8. The Supplier shall be responsible for any unauthorised, false or fraudulent response to any invitation to participate in a procurement that is submitted using one of its Supplier Users' user ID and password.

8. General Provisions for the Submission of Responses

8.1. 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 the Buyer to invalidate or reject the response to the procurement exercise.

8.2. 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.

8.3. Responses may be submitted through the System at any time up to the closing date and time as specified on the System.

8.4. The Supplier must submit responses in accordance with the instructions in the ITT and any explanatory documentation or guidance.

8.5. Responses will be opened by the Buyer in accordance with the opening procedures specified on the System for each procurement exercise.

9. Intellectual Property Rights

9.1. All Intellectual Property Rights in the System are owned by, or are under licence to, the Buyer.

9.2. The Supplier and its Supplier 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.

10. Data Protection

10.1. In its use and access of the System, the Supplier shall comply with the Data Protection Act 1998 and all relevant regulations together with any codes of conduct and guidance issued by the Information Commissioner and it shall not do or cause or permit to be done anything which may cause or otherwise result in a breach by the Buyer of the same.

10.2. Atamis Limited, on behalf of the Buyer, will collect, hold and use personal data obtained from and about the Supplier Users pursuant to paragraph 3.1. The Supplier agrees to such data being collected, held and used in accordance with this User Agreement and its obligations under the Data Protection Act 1998.

11. Limitation of Liability

11.1. Neither the Buyer nor the Supplier excludes or limits liability to the other for death or personal injury caused by its own negligence, fraud or fraudulent misrepresentation, or any other liability which cannot be limited or excluded by law.

11.2. In no event shall the Buyer be liable to the Supplier for any direct loss, indirect loss or damages incurred by the Supplier arising from the use of the System caused by:

- a) An event of Force Majeure that affects the availability and/or performance of the System;
- b) Incorrect use by Supplier Users of the System;
- c) Connectivity failures in respect of the equipment used by the Supplier Users;
- d) Breakdown of the System for a period of time not exceeding 30 Working Days.

11.3. The Supplier acknowledges and accepts that:

- a) The Buyer reserves the right to interrupt and/or suspend the availability of the System and/or revoke access at any time by notice to the Supplier without incurring any liability;
- b) The Buyer provides the System on an "as is" basis and "as available" basis without any warranty of any kind;
- c) The Buyer does not accept any liability for any information or links on the System that may refer Supplier Users to external sources outside of the Buyer's reasonable control.

11.4. The Supplier will indemnify the Buyer in full against all claims, demands, actions or proceedings (including legal and other professional advisers fees) made by any third party arising out of or in relation to the Supplier's breach of its obligations under this User Agreement.

12. Rights of Third Parties

12.1. This User Agreement shall not create any rights that shall be enforceable by anyone other than the Buyer and the Supplier, except that the rights specified in Clause 11.2 may be enforced by Atamis Limited.

13. Amendments to User Agreement

13.1. Subject to Clauses 13.2 and 13.3, the Supplier acknowledges that the Buyer reserves the right to vary or amend this User Agreement by publication of a notification or message on the System or through an email or letter to the Supplier in accordance with Clause 15.

13.2. The amendments shall be deemed to have been accepted by the Supplier unless the Helpdesk receives, within 15 days of the date of the notice under Clause 13.1, a written communication from the Supplier expressing refusal of the amendments. In any case, the Supplier's continued use of the System shall represent its unconditional acceptance of the amendments in its entirety.

13.3. The Supplier shall be entitled to terminate this User Agreement with immediate effect in the event that notice is given pursuant to Clause 13.1.

14. General

14.1. The waiver by either party of any breach of this User Agreement 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 this User Agreement is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this User Agreement and the validity and/or enforceability of the remaining provisions of this User Agreement shall not in any way be affected or impaired as a result of that omission.

14.3. The Buyer and the Supplier acknowledge that, for the entire duration of the procurement exercise, 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 a procurement exercise.

15. Notices

15.1. All communications given under this User Agreement shall be in writing and shall be:

- a) served to the Supplier, via e-mail, to the e-mail address the Supplier has given upon registration or through the messaging facility available on the System; or
- b) served to the Buyer, via e-mail to support@atamis.co.uk or through the messaging facility available on the System; and

c) deemed to be received by the addressee on the same day as the addressor sending such e-mail, subject to the:

- i. addressor using the addressee's correct e-mail address; and
- ii. addressee, on receipt of such an e-mail, e-mailing an acknowledgement of receipt to the addressor as soon as is practicable and in any event not later than 17:00 of the following Working Day after the addressee received such e-mail.

15.2. If the addressor fails to receive such acknowledgement by 17:00 of the next Working Day after the addressee received the e-mail, the addressor may also serve the communication by first class registered post to:

- a) the Supplier, to the postal address the Supplier has given upon registration; or
- b) the Buyer, to the postal address in Wales the Buyer has given in the procurement exercise and shall be deemed to be received by the addressee two working days after posting.

15.3. Either party to this User Agreement may change its postal address for notification purposes by giving the other reasonable

prior written notice of the new information and its effective date pursuant to this Clause 17.

16. Law and Jurisdiction

16.1. This User Agreement 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