



Sandwell Travel Assistance

Flexible Purchasing System

Rules

Version 1 (2024) of these Rules

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Version 1 (2024) of these Rules

1. Introduction to these Rules

1.1. What is the '**Flexible Purchasing System**'

A flexible purchasing system comprising a number of Lots described in section 2.1 relating to services within the scope described in paragraph 1.2.

1.2. Scope of the Flexible Purchasing System

Travel assistance for children and adults.

1.3. Who is the Council

Sandwell Metropolitan Borough Council.

1.4. The Council's role

- The Council has established the Flexible Purchasing System.
- The Council has done so on behalf of itself and the Permitted Purchasers described in paragraph 3.1.

1.5. Introduction on how this Flexible Purchasing System is to operate

- The Flexible Purchasing System comprises a number of Lots described in paragraph 2.1.
- Under each Lot, each Permitted Purchaser described in paragraph 3.1 may enter into Call-off Contracts with Member Providers from time to time.

1.6. Purpose of these Rules

These Rules govern the conduct of the Flexible Purchasing System.

1.7. Operators to whom these Rules apply in relation to a particular Lot

Each operator:

- **If it is an Applicant for the Lot:** after its Application has been submitted and until the result has been communicated to it.
- **If it is a Member Provider of the Lot:** after communication of its successful Application and then continuously while it remains a member of the Lot.

1.8. Legal nature of these Rules

By

- Applying to be a member of any Lot of the Flexible Purchasing System; and/or
- Agreeing to take on a particular Call-off Contract under this Flexible Purchasing System

a Member Provider is deemed to have accepted these Rules (as they stand at the time) in relation to its membership of that Lot.

The Member Provider shall remain bound to the Rules (as they stand from time to time) for as long as the Member Provider remains a member of any Lot.

2. Lots

2.1. Current number of Lots as at 2024

3

2.2. Description of each Lot

(a) Lot 1

For SEND transport for children and young people **other than** looked after children.

(b) Lot 2

For SEND transport for children and young people **who are** looked after children.

(c) Lot Z (miscellaneous)

Miscellaneous Contracts

- Which are within the scope of the Flexible Purchasing System as described in paragraph 1.2; and
- Which are not wholly within the scope of any other Lot of the Flexible Purchasing System at the time.

2.3. How the Council changes the number of Lots from time to time

E.g. to create new Lots, to consolidate existing Lots, to discontinue any Lots

- As decided by the Council from time to time.
- **If there is a decision to consolidate any Lots in place at the time:** the Council must include Member Providers which are then members of the affected Lots in appropriate levels of engagement before making the decision.

3. Permitted Purchasers

3.1. Public bodies who are entitled to enter into Call-off Contracts with Member Providers under the Flexible Purchasing System

- Each of them is a '**Permitted Purchaser**'
- Including any successor bodies of any of these

(a) The Council

Sandwell Metropolitan Borough Council

(b) Schools

Any school

- Which is located within the boundaries of Sandwell Metropolitan Borough Council; and
- Which is (at the time)
 - **In relation to Call-Off Contracts entered before the Procurement Act 2023 comes into force in England:** a contracting authority for the purposes of the Public Contracts Regulations 2015.
 - **In relation to Call-Off Contracts entered on or after the Procurement Act 2023 comes into force in England:** a contracting authority for the purposes of the Procurement Act 2023.

(c) Companies

	<p>Any company</p> <ul style="list-style-type: none">• In which any other Permitted Purchaser described elsewhere in this paragraph 3.1 is a shareholder; and• Which at the time meets all of the requirements of regulation 12(1) of the Public Contracts Regulation 2015.
3.2. Liability of one Permitted Purchaser ('X') for the liabilities of another Permitted Purchaser ('Y') in respect of any Call-off Contract entered into by Y but not by X	<ul style="list-style-type: none">• X shall not be liable for Y's liabilities arising under or in connection with that Call-off Contract (e.g. Y's liability to pay the relevant Charges).• Exception: to the extent X has accepted liability for any such debts or other liabilities in writing in a legally binding document (e.g. in a legally binding guarantee).
3.3. Whether 2 or more Permitted Purchasers may enter into one Call-off Contract	They may do so, as they agree.
3.4. If 2 or more Permitted Purchasers are parties to the one Call-off Contract	Their liabilities under the Call-off Contract shall be joint and several except to the extent otherwise clearly indicated in the Call-off Contract.

4. Objectives

4.1. The objectives of the Council in relation to the Flexible Purchasing System are as follows

(a) Market sustainability

To shape, sustain and improve provider markets.

(b) Standardise

To standardise as far as possible the dealings which Member Providers have with the Permitted Purchasers across Sandwell.

(c) New entrants

To encourage new entrants into the market by allowing access to opportunities for business with the Permitted Purchasers without an unnecessarily long wait or an arduous procurement exercise.

(d) Minimise administrative burden

To minimise the administrative burden on the Permitted Purchasers and the Member Providers.

(e) Cooperation

To enable the Permitted Purchasers to work in cooperatively with Member Providers, and other stakeholders (e.g. service users, schools, other organisations) to meet objectives (e.g. improved outcomes for service users, better value for money for the Permitted Purchasers).

5. Duration

5.1. From when any Permitted Purchaser may first enter into a Call-off Contract with a Member Provider under the Flexible Purchasing System

Anytime on or after acceptance of Member Providers onto the Flexible Purchasing System.

5.2. Duration of the Flexible Purchasing System

- **10 years** from the date on which the Council awards its first places on the Flexible Purchasing System.
- This is an indicative timeframe.
- The Council may continue to operate the Flexible Purchasing System beyond 10 years if it wishes to do so.
- Given the Council has no obligation to place minimum volumes of business under the Flexible Purchasing System (paragraph 6.1) or to use the Flexible Purchasing System exclusively (paragraph 7.1), the Council may discontinue using the Flexible Purchasing System at any time.

5.3. Consequence for the end of the Flexible Purchasing System on any Call-off Contract then in place

- The end of the Flexible Purchasing System does not in itself automatically result in the termination of that Call-off Contract.
- That Call-Off Contract shall continue until it expires or is terminated according to its own terms and conditions.

6. Guaranteed minimum volumes

6.1. Whether the Council and/or any other Permitted Purchaser **guarantees any Member Provider any minimum volume of business** under the Flexible Purchasing System

No guaranteed minimum volumes.

7. Exclusivity

7.1. Whether **the Council and/or any other Permitted Purchaser** is obliged under these Rules to use any part of the Flexible Purchasing System **exclusively**

No exclusivity obligation.

7.2. Whether **any Member Provider** is obliged under these Rules to supply any goods, services and/or works to any Permitted Purchaser **on an exclusive basis**

No exclusivity obligation.

8. A Member Provider’s obligation to enter into Call-off Contracts

8.1. Whether any Member Provider is contractually obliged in connection with the Flexible Purchasing System

- To accept any particular Call-off Contract; and/or
- To accept any minimum volume of business offered by any Permitted Purchaser; and/or
- To participate in any minimum number of mini-competitions.

No contractual obligation on a Member Provider to do so.

9. Number of Member Providers

9.1. Whether there is to be any maximum number of Member Providers on a particular Lot at any time

- No maximum.
- The Council shall admit each Applicant as a Member Provider of each Lot
 - In relation to which the Applicant has submitted an Application; and
 - Where the Council (in its professional judgement and according to its published criteria) has evaluated that Application as 'satisfactory' on a pass-fail basis.

9.2. Whether there is any 'preferred status' or the like held by any Member Provider in relation to a particular Lot

No.

10. Applying to become a Member Provider

10.1. How an Applicant joins any Lot from time to time

According to application procedures published by the Council from time to time through its electronic procurement system.

10.2. When Applicants may **first apply** to become Member Providers of a particular Lot

(a) First intake

The closing date for the first intake of Applications is as published by the Council in the initial Application Form.

(b) Second intake

- The closing date and time for Applications is **5pm on 31st December 2024**; or
- Such earlier date as published by the Council at its discretion.

(c) Subsequent intakes

- The closing date and time for Applications is **5pm on each 30th April** (or if that day falls on a Saturday, Sunday or English public holiday, on the next business day of the Council); or
- For a particular year, such earlier date as published by the Council at its discretion.

The Council may do either of the following from time to time:

- Change the closing date and time for a particular year by giving at least **3 months** prior notice as published on its electronic procurement system.
- Change the frequency of opening (not to be less frequent than at least once per calendar year).

10.3. How the Council will evaluate an Applicant's Application to become a Member Provider on a particular Lot

Entirely on a pass-fail basis according to criteria indicated in the application form or equivalent as published by the Council at the time.

10.4. When decisions are communicated by the Council to Applicants on the outcome of their Applications

- **In the case of the first intake described in paragraph 10.2(a):** at the time published by the Council.
- **In the case of the subsequent intakes described in paragraph 10.2(b) or paragraph 10.2(c):** the Council aims to evaluate Applications and to respond to Applicants with the results of their Applications no later than **1 month** after the relevant closing date.
- These times are to be regarded as estimates only.
- The Council is not liable to any Applicant if the Council incurs delays outside its reasonable control in evaluating Applications (e.g. staff illness, high volumes of applications, other workload, delays in evaluating an Application because the Council seeks clarification from the Applicant).

10.5. Whether there is any minimum or maximum number of Lots for which a prospective Member Provider may apply

No.

10.6. Whether an Applicant may apply to become a Member Provider for different Lots at different times

- The Applicant may do so.
- The Council may waive any requirements in a later application procedure if the Applicant has satisfactorily met those requirements in an earlier application for another Lot.

10.7. If an Applicant's Application is unsuccessful, whether the Applicant and/or its Affiliate may reapply

No restrictions on it doing so.

11. Membership of Lot Z

11.1. How an operator becomes a member of Lot Z

Each operator which is a Member Provider of at least one other Lot from time to time is automatically treated as a Member Provider of Lot Z.

12. Changing application requirements

12.1. How the Council changes minimum requirements in relation to a particular Lot

The Council may from time to time change the minimum requirements

- For Applicants applying to become Member Providers of a particular Lot; and
- For Member Providers to remain members of a particular Lot

to reflect changes in standards, work practices etc. (e.g. new technology, new procedures, changes in the Law etc.).

12.2. Changes suggested by Member Providers

- The Council encourages Member Providers to suggest changes to the Council (e.g. improved work practices etc.).
- If those changes are accepted by the Council, they may (in due course) become part of the minimum requirements applicable to new Applicants and to existing Member Providers.

12.3. How changes to minimum requirements are to be applied to existing Member Providers on a particular Lot

- Existing Member Providers will be given an appropriate period of prior notice to meet the revised minimum requirements.
- The amount of notice will depend on the circumstances. For example, relatively simple changes may be subject to relatively short notice periods. More complicated changes would be subject to longer notice periods.
- The levels of consultation will depend on the change required. For example, if a change is required by Law anyway, the Council will not be in a position to engage in detailed consultations on whether or not the change must be implemented, nor in setting the deadlines for doing so. Also, minor changes are likely to entail less consultation than more significant changes.

12.4. If a Member Provider fails to meet the revised minimum requirements by the end of the notice period

- The Council must remove the Member Provider from the relevant Lot.
- The Member Provider will not be eligible to be awarded future Call-off Contracts under that Lot until the Member Provider is re-admitted.
- It does not in itself affect any Call-Off Contracts then in place.
- The Member Provider may re-apply to join the Lot when it wishes to do so. The Council will evaluate the Member Provider's re-application against the minimum requirements that apply at the time.

12.5. How changes to minimum requirements are to be applied to Applicants not yet on a particular Lot

- The change will form part of the evaluation requirements for future Applicants from the end of the relevant notice period applicable to the Member Providers on the relevant Lot.
- If an Applicant cannot meet the new minimum criteria, it will not be admitted to the Lot as a Member Provider.

13. Types of Call-Off Contracts

13.1. Types of Call-Off Contract under this Flexible Purchasing System

(a) Individual Contracts

A Call-Off Contract between a Permitted Purchaser and a Member Provider for services to be provided to a specifically-named individual under each Lot **other than Lot Z.**

(b) Miscellaneous Contracts

A Call-Off Contract between a Permitted Purchaser and a Member Provider under Lot Z.

14. Awarding Call-off Contracts

14.1. How each Call-off Contract is to be awarded under the Flexible Purchasing System

(a) Direct award – permitted

The Permitted Purchaser may directly award a Call-Off Contract to a Member Provider if the Permitted Purchaser is permitted to do so according to the following:

- Relevant Law; and
- The Permitted Purchaser's contract procedure rules or standing orders or similar.

(b) Otherwise where a direct award is not permitted under paragraph (a)

- By mini-competition or any other procedure that complies with relevant Law and the Permitted Purchaser's contract procedure rules or standing orders or similar.
- All Member Providers of the relevant Lot will be invited to take part, other than those suspended at the time according to section 25 of these Rules.
- The Permitted Purchaser will establish and communicate the following in relation to a mini-competition at the relevant time:
 - Appropriate award and evaluation criteria (whether price only or price-quality) and
 - Other aspects of the mini-competition (e.g. procedures, deadlines etc.).

14.2. Right to request further information etc.

The Council and/or any other Permitted Purchaser may (acting reasonably) ask further questions and/or to seek further information or assurances from any Member Provider before awarding any Call-off Contract to that Member Provider.

14.3. How changes to the procedures described in this section 14 are to be decided and made in relation to any Lot

The Council wishing to make those changes in relation to the procedures in relation to that Lot:

- Must give Member Providers of the Lot suitable notice of those changes; and
- Must involve Member Providers in appropriate levels of consultation before making those changes.

15. Procedures to enter Call-off Contracts

15.1. Procedures for the Permitted Purchasers to enter into Call-off Contracts under the Flexible Purchasing System

By the parties having evidenced their agreement:

- In writing (text messages, social media messages or equivalent are in themselves not sufficient evidence).
- By appropriately authorised representatives.

16. About Call-off Contracts and the Service Specification

16.1. All of the following documents (and no other documents) comprise the full terms and conditions of an **Individual Contract** between a Permitted Purchaser and a Member Provider, as listed in order of priority

(a) The Work Schedule	<ul style="list-style-type: none"> • The Work Schedule (i.e. effectively the work order) applicable to the Call-off Contract. • This includes any documents accompanying (and forming part of) the Work Schedule (e.g. any care plan or the like, if relevant).
(b) Service Specification	Any Service Specification which applies to the relevant Lot at the time.
(c) Call-Off Contract terms and conditions	The Call-Off Contract terms and conditions published by the Council at the time the Call-Off Contract is entered.
(d) Other cross-referenced documents	Any other documents (including the contents of any website) which are cross-referenced in any of the documents described in paragraph (a), paragraph (b) and/or paragraph (c) to the extent these have been sufficiently communicated by the Council and/or the relevant Permitted Purchaser to the Member Provider in writing.
(e) Member Provider response - Call-Off Contract	<ul style="list-style-type: none"> • Any and all responses submitted by the Member Provider in connection with the direct award or any mini-competition relating to the Call-Off Contract (including any responses to any clarification questions or similar issues by the Permitted Purchaser). • These may override any of the other paragraphs indicated elsewhere in this paragraph 16.1 if the Permitted Purchaser decides at its discretion (e.g. if it considers any of these responses to be more favourable).
(f) Member Provider's Application	<ul style="list-style-type: none"> • Any and all responses submitted by the Member Provider in its Application for membership of the relevant Lot (including any responses to any clarification questions or similar issues by the Permitted Purchaser). • These may override any of the other paragraphs indicated elsewhere in this paragraph 16.1 if the Permitted Purchaser decides at its discretion (e.g. if it considers any of these responses to be more favourable).
16.2. What comprise the full terms and conditions of a Miscellaneous Contract between a Permitted Purchaser and a Member Provider	As indicated in the relevant Miscellaneous Contract.

<p>16.3. How amendments are to be made to the terms and conditions of a particular Call-Off Contract (as described in paragraph 16.1) after that Call-off Contract has been entered</p>	<ul style="list-style-type: none"> • According to the requirements of the terms and conditions that apply at the time. • This is subject to any requirements of the following: <ul style="list-style-type: none"> – The Law (including regulation 72 of the Public Contracts Regulation 2015). – The Permitted Purchaser’s contract procedure rules or standing orders or similar.
<p>16.4. How amendments are to be made to from time to time to the Service Specification (as described in paragraph 16.1(b) in relation to a particular Lot</p>	<ul style="list-style-type: none"> • By the Council • Having communicated the matter to each Member Provider. • Having appropriately engaged the Member Providers generally. • Having given Member Providers appropriate notice before the amendments come into effect having regard to the circumstances (e.g. the complexity of the amendment).
<p>16.5. How amendments are to be made to from time to time to the Call-Off Contract terms and conditions published by the Council (as described in paragraph 16.1(c)) in relation to a particular Lot</p>	<ul style="list-style-type: none"> • By the Council • Having communicated the matter to each Member Provider. • Having appropriately engaged the Member Providers generally. • Having given Member Providers appropriate notice before the amendments come into effect having regard to the circumstances (e.g. the complexity of the amendment).
<p>16.6. Whether amendments described in paragraph 16.4 or in paragraph 16.5 automatically apply to any Call-off Contract in place at the time the amendment is made</p>	<ul style="list-style-type: none"> • No. • Except to the extent the relevant Permitted Purchaser and the Member Provider agree (at their discretion) according to the requirements for amending contracts in the relevant call-off terms and conditions.

17. Charges

<p>17.1. Charges payable by the Permitted Purchasers under each Call-off Contract in relation to a Lot</p>	
<p>(a) In relation to an Individual Contract described in paragraph 13.1(a)</p>	<p>As indicated in the relevant Work Schedule of the Call-Off Contract.</p>
<p>(b) In relation to a Miscellaneous Contract described in paragraph 13.1(b)</p>	<p>As indicated in the relevant Work Schedule of the Call-Off Contract.</p>
<p>17.2. How Charges in relation to Call-off Contracts generally in relation to a Lot are to change over time</p>	<p>As indicated in the Call-Off Contract.</p>
<p>17.3. How Charges are to change over time in relation to a particular Call-off Contract after it is entered</p>	<p>As indicated in the relevant Call-off Contract.</p>

18. Social value

18.1. The social obligations of the Member Provider in connection with its membership of the Flexible Purchasing System

- No social obligations on a Member Provider simply due to its membership of any Lot of the Flexible Purchasing System.
- A Permitted Purchaser may from time to time include social value considerations in a mini-competition and/or a Call-Off Contract.

19. Required Accreditations

19.1. Indicate any Required Accreditations which a Member Provider must meet at all times to remain a member of a particular Lot

- Private Hire Operator Licence
- Restricted Private Hire Operator Licence (Home to School Only Licence)
- Standard National PSV Operator License
- Standard National and International PSV Operator License
- **In any case:** any others which are required by Law from time to time to carry out activities relevant to that Lot.

19.2. Whether a Permitted Purchaser may add further Required Accreditations (in addition to those in paragraph 19.1) in relation to a particular Call-Off Contract

The Permitted Purchaser may do so.

20. Insurance

20.1. Indicate any minimum levels of insurance cover which a Member Provider must have in place at all times to remain a member of a particular Lot

(a) Employers' liability

£10 million or such higher level required by Law for each claim.

(b) Public liability

£10 million per claim.

(c) Motor liability insurance

£10 million per claim.

20.2. Where the Member Provider is not required to have the insurance cover indicated in paragraph 20.1

- Only with the written consent of the Council.
- Such consent cannot be unreasonably withheld where there are reasonable alternative arrangements in place (e.g. suitable self-insurance arrangements).

21. Providing accounts

21.1. Each Member Provider must submit to the Council the following for as long as it is a member of any Lot

(a) If the Member Provider is a sole trader or a partnership comprised of 2 or more individuals

For each year ending 5th April, the Member Provider must submit to the Council his/her or their financial accounts for that year no later than **5th April** in the next year. If that deadline falls on a Saturday, Sunday or English public holiday, the deadline is the next working day.

(b) If the Member Provider is any other kind of entity (e.g. a company)

The Member Provider must submit to the Council its full financial accounts for the Member Provider's year end no later than **18 months** after that year end.

21.2. How a Member Provider submits its accounts as required under paragraph 21.1

By submission through the Council's electronic procurement system, or as the Council otherwise reasonably instructs from time to time.

21.3. Consequences if a Member Provider's accounts are overdue from time to time

The Council may suspend that Member Provider from any one or more Lots on which it is a member until the Member Provider submits the relevant accounts.

21.4. Other rights of the Council

The Council may do any of the following in relation to a Member Provider whilst it is a member of any Lot of the Flexible Purchasing System:

- Make random checks of a Member Provider's published accounts.
- Make random checks of the Member Provider through a reputable credit reference agency.

22. Assignment of place as a Member Provider

22.1. Right of a Member Provider to assign its place as a Member Provider of a particular Lot

- The Member Provider may do so only with the prior written consent of the Council.
- The Council may not unreasonably withhold that consent.

23. Confidentiality

What is 'Confidential Information'

23.1. What is Confidential Information of an operator under these Rules

(a) What is Confidential Information of an Applicant (whether or not its Application is successful)

The contents of a genuinely confidential nature in an Applicant's Application.

(b) What is Confidential Information of a Member Provider whilst it is a member of any Lot

Each of the following:

- The circumstances of any suspension under section 25.
- The contents of any financial accounts which the Member Provider has disclosed to the Council under section 21.

23.2. A piece of information of the operator is not in any case its Confidential Information if any of the following applies to that piece of information at the time

(a) In public

- The piece of information is at the time held in any format to enable it to be known to the public generally without the Council and/or its Affiliate requiring acceptance of confidentiality obligations to the operator and/or its Affiliate by the relevant member of the public.
- **Exception:** if it has first entered the public domain as a result of any breach of a duty of confidentiality owed by the Council under these rules and/or under any other contract between the operator and the Council.

(b) Independently acquired

- The Council and/or its Affiliate and/or their respective Personnel receives that information in good faith from a third-party in circumstances unconnected with the Flexible Purchasing System and/or any Call-Off Contract.
- **Exception:** where the Council knows or has reasonable grounds to suspect that the third-party is in breach of confidentiality obligations owed to the operator and/or its Affiliate.

(c) Trivial

The information is of a trivial nature.

Confidentiality obligations

23.3. The Council must comply with all of the following obligations in relation to each piece of Confidential Information of the relevant operator in the possession of the Council from time to time

These obligations continue for the period indicated in paragraph 23.4

(a) Non-disclosure
(except to the extent permitted in paragraph 23.5)

The Council

- Must keep that Confidential Information strictly in confidence, and
- Must not disclose it or make it available to third parties.

(b) Not to copy, use

- The Council must not copy, modify, reverse engineer or otherwise use that Confidential Information for any purpose other than for legitimate purposes connected with the provision of the Services.
- As examples of the above, the Council must not use that Confidential Information to conduct any venture (whether for profit or otherwise) independently of the operator.

(c) **Storage:** the Council (where it is the Provider) must store the Confidential Information as follows:

- (i) Reasonable standard
- (ii) Comparable

To a reasonable standard of security.

In any case, not to a lower standard of security the Council uses to store its own information of comparable confidentiality.

23.4. Period of the Council's obligations in paragraph 23.3 in relation to each piece of the operator's Confidential Information

(a) If the operator is an Applicant who **does not** become a Member Provider of at least one Lot

- **3 years** from the date on which the Council communicates the outcome to the operator; or
- Such longer or shorter period required by Law in relation to that piece of Confidential Information; or
- In any case, when the piece of Confidential Information ceases to be 'Confidential Information' of the operator according to paragraph 23.2.

(b) If the operator is a Member Provider of at least one Lot

- **3 years** from the expiry date of the Flexible Purchasing System or any earlier date on which the operator is no longer a Member Provider of any Lot whatsoever; or
- Such longer or shorter period required by Law in relation to that piece of Confidential Information; or
- In any case, when the piece of Confidential Information ceases to be 'Confidential Information' of the operator according to paragraph 23.2.

Exceptions to obligations

23.5. **Permitted disclosures:** the Council is permitted to disclose or make available any Confidential Information of the operator

- Only in at least one of the following circumstances
- Regardless of paragraph 23.3(a)

(a) Consent

With the prior written consent of the operator, subject to the Council's compliance with any conditions attached to that consent.

(b) Disclosures to any of the following
Subject to paragraph 23.6

(i) Personnel	To the genuine existing or prospective Personnel of the Council and/or its Affiliates.
(ii) Advisors etc.	To the Council's genuine existing or prospective advisers, contractors, consultants, agents, insurers, auditors and banks.
(iii) Other Permitted Purchasers	To other Permitted Purchasers for purposes genuinely connected with their participation in the Flexible Purchasing System.
(iv) Public body	Any public body authorised to review the Flexible Purchasing System.
(v) Assignment, novation	Any person to whom the Council wishes to make a genuine novation and/or assignment of any part of the relevant Individual Contract.

(c) Required by Law
Subject to paragraph 23.7

(c) Required by Law Subject to paragraph 23.7	<p>To the extent the Council is required to disclose or make available the Confidential Information by Law to any of the following (for example):</p> <ul style="list-style-type: none"> • A court or anything similar body. • A regulatory body. • A genuine public auditor, the UK Parliament or other genuine public body, or as required under any Law related to freedom of information. • A law enforcement body.
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23.6. All of the following rules apply to the Council disclosing (or making available) any Confidential Information of the operator to any person under paragraph 23.5(b)

(a) Need to know	<p>The Council may only disclose (or make available) that Confidential Information to that person</p> <ul style="list-style-type: none"> • In good faith; and • Only on a strict 'need to know' basis.
(b) Treating unauthorised disclosures etc.	<ul style="list-style-type: none"> • The parties must regard any unauthorised disclosure or other misuse of such Confidential Information by any such person as if it were the Council's own act. • This does not in itself limit the operator's rights against that person.

23.7. The Council must comply with all of the following if it is compelled by Law to disclose or make available any Confidential Information of the operator for the purposes of paragraph 23.5(c)

(a) Inform

The Council must inform the operator of the circumstances

- With sufficient detail and accuracy and
- Promptly on becoming aware of the obligation to make the compelled disclosure.

(b) Make person aware

The Council must make the person compelling the disclosures aware of the duty of confidentiality owed to the operator in relation to the relevant information.

(c) Assist the operator to challenge

- The Council must provide the operator with reasonable and timely assistance on the operator's request if the operator wishes to challenge the compelled disclosure.
- The operator must reimburse the Council for the Council's reasonable and sufficiently evidenced costs in providing that assistance.

(d) Keep to minimum

The Council must keep such disclosures to the minimum it is compelled to disclose or make available.

(e) Exceptions to the rest of this paragraph 23.7

The rest of this paragraph 23.7 does not apply if disclosure is required under any Law relating to freedom of information.

23.8. Reporting to police etc.

Nothing in this section 23 or elsewhere in these Rules prevents the Council disclosing any Confidential Information of an operator in connection with the genuine reporting of any breach of the Law of any person (including the operator) to the police and/or to other relevant law enforcement bodies.

24. Keeping informed

Events or circumstances on which the Member Provider must keep the Council informed under this section 24

- In writing where reasonably practicable
- In a proper and timely manner when the Member Provider first becomes aware of the matter
- The Member Provider must also keep the Council informed in a proper and timely manner of significant progress of events as they occur in relation to the relevant matter

24.1. Any event or circumstance to which both of the following apply

(a) Who it affects

The event or circumstance affects the Member Provider, its subcontractors and/or any of their respective Personnel, regardless of whether or not in connection with a particular Call-off Contract.

(b) Adverse publicity	If the event or circumstance were publicly known, it would create an unreasonable risk of serious, unjustified and unfavourable publicity to any Permitted Purchaser due to its association with the Member Provider.
24.2. Loss of Required Accreditation	The Member Provider losing or having imposed on it any significant restrictions or conditions on or being under a serious threat of losing or having imposed on it, any Required Accreditation which it is required to have under paragraph 19.1.
24.3. Insurance	<ul style="list-style-type: none"> • The Member Provider not having in place all of the required insurance cover (to the minimum level) as indicated in paragraph 20.1. • Exception: to the extent the Member Provider is exempt in relation to the relevant insurance cover under paragraph 20.2.
24.4. Any of the following if the Member Provider is a human being acting as a sole trader	
(a) Bankruptcy	The Member Provider's bankruptcy and/or Any bankruptcy proceedings being commenced against the Member Provider.
(b) Charge, conviction	The Member Provider being charged or convicted of a crime of dishonesty or violence (regardless of the penalty) or a crime of any other kind resulting him/her receiving a prison sentence (whether served or suspended).
(c) Right to remain	The Member Provider no longer having right to remain in the United Kingdom.
24.5. Any of the following if the Member Provider is an entity other than a human being (e.g. a company)	
(a) Winding up	Any order of a court (or equivalent) being made or any resolution being passed requiring the Member Provider to be dissolved and/or wound up.
(b) Appointments	The appointment of a liquidator, provisional liquidator, trustee, administrator, controller, receiver or receiver and manager (or any equivalent of any of these in another relevant jurisdiction) in relation to the Member Provider and/or its assets.
(c) If the shares of the Member Provider are listed on a stock exchange	Any profit warnings in relation to the Member Provider which are issued to that stock exchange.
(d) Change in control	Any change in the Control of the Member Provider.
24.6. If the Member Provider is a consortium, partnership or the like, any of the following	
(a) Change	Any change in the composition of its membership.
(b) Events affecting members	Any of the events or circumstances indicated elsewhere in this section 24 in relation to the Member Provider applies to any of its members individually.

24.7. Safeguarding investigations

Any safeguarding investigations affecting the Member Provider and/or its Affiliates, whether in relation to activities connected with this Flexible Purchasing System or otherwise.

24.8. Corrupt Acts

Any breach by the Member Provider of section 29 relating to Corrupt Acts.

25. Suspension of a Member Provider

25.1. The Council may suspend a Member Provider from any Lot on which it is a member at the time if and for as long as any of the following applies at the time

(a) Material Breach

- If (and for as long as) the Member Provider is remedying a Material Breach of any particular Call-off Contract in place at the time.
- This applies regardless of which Permitted Purchaser is a party to the Call-off Contract.

(b) Overdue accounts

In the circumstances described in paragraph 21.3 in relation to overdue accounts.

(c) Suspension under a Call-Off Contract

If and for as long as the Member Provider is suspended from providing relevant services under any Call-Off Contract, according to the terms of that Call-Off Contract.

(d) Investigations: if (and for as long as) all of the following apply

(i) Non-routine investigation

- Any of the following:
 - The Member Provider and/or
 - Its Affiliate and/or
 - Any individual who alone exercises control over the Member Provideris subject to any significant, non-routine investigation by any regulatory or law enforcement agency (e.g. the police, the Council exercising any function etc.),
- This applies whether or not the investigation relates to activities connected with any Call-off Contract.

(ii) Risks

If the Council did not suspend the Member Provider from the Lot, there would be an unreasonable risk of any of the following:

- Serious harm to any individual.
- Serious adverse consequences for any person's property.
- Any Permitted Purchaser and/or its Affiliate breaching any genuine existing arm's length duty of care to another person.
- Serious, unjustified and unfavourable publicity to any Permitted Purchaser and/or its Affiliate.

(e) Grounds for exclusion	If and for as long as any of the grounds for exclusion under regulation 57 of the Public Contracts Regulations 2015 apply to the Member Provider.
25.2. How the Council exercises its rights to suspend the Member Provider from the relevant Lot	<ul style="list-style-type: none"> By communicating the matter in writing to the representative of the Member Provider. The communication must indicate the reasons for the suspension.
25.3. For how long the Council is entitled to suspend the Member Provider from the relevant Lot	Only for as long as any of the circumstances in paragraph 25.1 continue to apply to the Member Provider.
25.4. Consequence of a Member Provider's suspension from the relevant Lot	That Member Provider shall not be eligible to enter into any Call-off Contract with a Permitted Purchaser under the Flexible Purchasing System during its suspension.
25.5. Consequences of a Member Provider's suspension under this section 25 on any existing Call-Off Contract in place at the time	Existing Call-off Contracts remain unaffected by the suspension itself.
25.6. Whether suspension of the Member Provider limits any person's rights and remedies in relation to the circumstances described in paragraph 25.1 E.g. the rights of any Permitted Purchaser to exercise any rights under its Call-off Contracts such as termination rights, if any	No.

26. Voluntary withdrawal from a Lot

26.1. Whether a Member Provider may voluntarily withdraw its membership of <ul style="list-style-type: none"> Any particular Lot and/or The Flexible Purchasing System as a whole 	<ul style="list-style-type: none"> The Member Provider may do so by communicating the matter to the Council. However, given the Member Provider is not obliged to accept any particular levels of business, the Member Provider is not obliged to communicate its wish to withdraw.
26.2. If a Member Provider voluntarily withdraws under paragraph 26.1, whether it may be readmitted if it wishes	<ul style="list-style-type: none"> Yes. However, the Member Provider will be expected to reapply as if it were a new Applicant.

27. Removal from a Lot

27.1. Whether the Council may remove a Member Provider from any one or more particular Lots of the Flexible Purchasing System	The Council may do so (but shall not be obliged to do so) if and for as long as any Removal Event under section 28 applies to the Member Provider at the time.
27.2. Whether the Council may remove the Member Provider under this section 24 from one Lot if the Removal Event only applies to another Lot	The Council may do so but is not obliged to do so.
27.3. How the Council exercises its rights to remove the Member Provider from the relevant Lot in the circumstances in paragraph 27.1	<ul style="list-style-type: none"> By communicating the matter in writing to the Member Provider through the Council's electronic portal. The communication must describe the relevant Removal Event to which the removal relates.

27.4. Consequences of a Member Provider's removal from any particular Lot of the Flexible Purchasing System	The Member Provider is removed from participation in the relevant Lot.
27.5. Consequences of a Member Provider's removal from any particular Lot of the Flexible Purchasing System on Call-Off Contracts then in place	The Member Provider's removal from that Lot does not in itself affect that Call-Off Contract.
27.6. Right of the Member Provider and/or its Affiliate to apply for readmission to the relevant Lot if the Member Provider has been removed under this section 27	<ul style="list-style-type: none"> • The Member Provider must undertake the normal application process that applies at the time. • The Council may (acting reasonably and proportionately) <ul style="list-style-type: none"> – May seek additional assurances from the Member Provider or Affiliate; and/or – May take additional steps to satisfy itself <p>That the Member Provider or its Affiliate (whichever is the Applicant) has taken suitable steps to rectify the issue that was the cause of the removal.</p>
27.7. Whether removal of the Member Provider under this section 27 limits and person's rights and remedies in relation to the relevant Removal Event (e.g. any rights to terminate a Call-off Contract)	No.

28. Removal Events

Each of the following is a Removal Event of the Member Provider

- To be read independently
- For as long as the relevant circumstances continue to apply to the Member Provider

28.1. Insurance	<ul style="list-style-type: none"> • The Member Provider does not have in place the insurance cover required in paragraph 20.1 at any time. • Except to the extent the Member Provider is exempt under paragraph 20.2 at the time.
28.2. Serious misconduct	<ul style="list-style-type: none"> • The Member Provider and/or its Affiliate has engaged in serious misconduct. • Such misconduct includes without limitation, the involvement of the Member Provider and/or its Affiliate in a serious public scandal (whether or not in connection with any Call-off Contract) in circumstances where a reasonable person would not expect the Council to allow a further association of this kind with the Member Provider.

28.3. **Misconduct in Application:** the Member Provider has engaged in serious misconduct in relation to

- Its Application to become a Member Provider of any Lot; and/or
- The award of any Call-off Contract under the Call-off Contract

Regardless of whether the misconduct occurred with the knowledge of the Member Provider's senior management

Including the following without limitation

- (a) Collusion
- (b) Corrupt Act
- (c) Canvassing

28.4. Corrupt Act

28.5. Loss of Required Accreditation

Engaging in any collusive or other anti-competitive conduct with other actual or potential operators.
Doing any act in connection with that competitive exercise that would breach section 29 in relation to Corrupt Acts.
Engaging in any canvassing activity with officers and/or elected members of a Permitted Purchaser and/or its Affiliate.
The Member Provider's breach of section 29 in other circumstances not described in paragraph 28.3 in relation to any Permitted Purchaser in connection with the Member Provider's membership of any Lot and/or in connection with any Call-Off Contract.
<p>The Member Provider does not (for any reason) hold any Required Accreditation which it is required to hold under paragraph 19.1 according to the following</p> <ul style="list-style-type: none"> • If the Member Provider is required by Law to hold that Required Accreditation to provide any services under a Call-off Contract of a relevant Lot: this shall be a Removal Event of the Member Provider even if the Member Provider later acquires that Required Accreditation. • Otherwise: this shall be a Removal Event only for as long as the Member Provider does not hold that Required Accreditation (i.e. it shall cease to be a Removal Event if the Member Provider later acquires the Required Accreditation before it is removed from the relevant Lot).

28.6. Change in control

Where all of the following apply:

- The Member Provider is a company with share capital.
- There is a change in the Control of the Member Provider.
- That change in Control is not the result of the purchase of shares in the Member Provider on a public stock exchange.
- The Council has raised objections (with reasonable grounds) to that change in control as follows
 - In writing through the electronic portal,
 - Not later than **30 days** of having first been sufficiently informed of the change in control.

For this purpose, the Council shall not be regarded as being sufficiently informed of the change in Control if the Council has raised genuine questions and/or requests for further information with the Member Provider about the change.

28.7. In relation to the Member Provider if he/she is a human being operating as a sole trader

(a) Bankruptcy

The Member Provider becomes bankrupt.

(b) Certain convictions

The Member Provider is convicted of

- Any crime of violence, dishonesty and/or relating to safeguarding
- Any other offence resulting in a prison sentence (whether suspended or served).

(c) Death

The Member Provider dies.

(d) Significant disability

The Member Provider suffers total and permanent disability.

(e) Mental Health Act (if the Member Provider is a human acting as a sole trader) if relevant

The Member Provider becomes a patient within the meaning of section 145(1) of the Mental Health Act 1983 or equivalent meanings in other similar replacement legislation or in equivalent legislation applying to the Member Provider in his/her relevant jurisdiction.

28.8. Certain appointments (if the Member Provider is not a sole trader – e.g. a company)

The Member Provider is subject to a court order (or equivalent) or a resolution requiring the appointment of a liquidator, provisional liquidator, trustee, administrator, controller, receiver or receiver and manager (or any equivalent of any of these in another relevant jurisdiction) in relation to the Member Provider and/or its assets.

28.9. Right to operate

The Member Provider is not permitted to operate in the UK

28.10. Winding up (if the Member Provider is not a sole trader – e.g. a company)

- The Member Provider is subject to a court order (or equivalent) or a resolution requiring the Member Provider to be dissolved and/or wound up.
- **Exception:** in relation to a genuine solvent reconstruction where
 - The replacement entity becomes a Member Provider itself in relation to the relevant Lot.
 - The replacement entity is under the same Control as the Member Provider.

28.11. Unable to pay debts

- If and for as long as the Member Provider is unable to pay its debts (taking into account its contingent and prospective liabilities) as defined in any applicable Law, including section 123 of the Insolvency Act 1986.
- This applies whether such debts individually or in aggregate equal any minimum required under relevant bankruptcy or similar legislation from time to time) as they fall due, and the Member Provider has no reasonable prospect of paying such debts.

28.12. Composition with creditors

If and for as long as the Member Provider is a party to a composition or other similar arrangement with its creditors, including any voluntary arrangement within Part I of the Insolvency Act 1986.

28.13. If the Member Provider is a consortium, partnership or the like

If and for as long as all of the following apply

- (a) Certain events apply to a member
- (b) If that member has not been removed from the consortium, partnership or the like: failure to take steps

Any of the events or circumstances described elsewhere in this section 28 applies to any member at the time of the consortium, partnership or the like.

- The Member Provider has failed to remove that member from its involvement with the relevant part of the Services within 14 days of the written request of the Council.
- That request by the Council must be issued in writing through its electronic portal.

29. Corrupt Acts

29.1. Obligations of a Member Provider in relation to Corrupt Acts

- The Provider must not do any of the following in connection with its membership of any Lot under the Flexible Purchasing System:
- Carry out any Corrupt Act; and/or
 - Assist or instruct another person to carry out any Corrupt Act.

29.2. A '**Corrupt Act**' is any of the following acts (to be read independently)

(a) Certain offers

The act is a direct or indirect offer or promise to which all of the following apply

- It is made to any Personnel of a Permitted Purchaser and/or its Affiliate
- It offers or promises any benefit or advantage (whether or not financial)
- The offer or promise is substantially for any of the following purposes
 - To encourage that Personnel to carry out his/her duties improperly.
 - To reward that Personnel for having carried out his/her duties improperly.

(b) Policy

- Any act which breaches any policy of the relevant Permitted Purchaser from time to time regarding gifts to its Personnel.
- But only to the extent the relevant Permitted Purchaser has communicated the policy to a Member Provider.

(c) Serious attempts

Any serious attempt by any Personnel of a Member Provider and/or its Affiliate to do any act described in paragraph (a) and/or in paragraph (b).

(d) Certain offences

In relation to a Member Provider's dealings with the relevant Permitted Purchaser in connection with the Flexible Purchasing System and/or any Call-Off Contract, conviction of any offence under any Law relating to fraud, particularly the Bribery Act 2010.

29.3. Consequence of a Member Provider's breach of paragraph 29.1

It shall be a Removal Event of a Member Provider.

- This applies regardless of the size of the breach.
- But only where the breach was done with the assistance or instruction of any member of a Member Provider's Personnel of at least equivalent seniority.

This does not limit the rights or remedies of the Council or any other Permitted Purchaser in relation to a Member Provider's breach of paragraph 29.1.

30. Amendment to the Rules

30.1. How these Rules are to be amended from time to time

As those amendments are published by the Council from time to time with the Council having given Member Providers at least **30 days** prior notice before the amendments come into effect.

30.2. Where a Member Provider's consent is required to any amendments published by the Council from time to time

The Council cannot apply any amendment to the Rules to a Member Provider without that Member Provider's written consent if any of the following applies to the amendment:

- It imposes any additional cost on the Member Provider.
- It applies retrospectively to the Member Provider (e.g. to a Call-Off Contract already in place).

31. Definitions

Except to the extent the context otherwise requires (and except to the extent otherwise indicated elsewhere in these Rules, the following capitalised words or expressions shall have the following meaning when used in these Rules

(a word or expression not defined below shall be defined according to 1) if there is a common meaning according to industry or trade, it shall have that meaning, or otherwise 2) it shall have the meaning given in the Oxford English Dictionary)

Affiliate	In relation to a person, any other entity which Controls that person, is Controlled by that person or is under the same common underlying Control as of that person.
Applicant	An operator applying to become a Member Provider of any Lot of the Flexible Purchasing System.
Application	An application submitted by the Applicant from time to time to the Council to apply to become a Member Provider of any one or more Lots.
Application Form	A form published by the Council from time to time which sets out the requirements for an Application.
Call-off Contract	Each contract described as such in paragraph 13.1.
Charges	The charges payable from time to time by a Permitted Purchaser to the Member Provider under a Call-off Contract.
Confidential Information	Information of an operator described as such in section 23.
Control	A person ('X') will be regarded as having control over another person ('Y') if X alone (and without being subject to the further direction of any other person) directly or indirectly possesses the power (whether by the direct or indirect holding of voting shares or otherwise) to direct the management and policies of Y on all matters.
Council	See paragraph 1.3.
Flexible Purchasing System	The flexible purchasing system described in paragraph 1.1 of these Rules.
Individual Contract	See paragraph 13.1(a).

Law	<p>Any of the following to the extent applicable to the Permitted Purchaser and/or to an Applicant and/or a Member Provider from time to time (to be read independently)</p> <ul style="list-style-type: none"> • Any statute, regulation, bye-law, order, subordinate legislation or the like of any of these. • Any directive or other European instrument (to the extent it is binding on the party) • Any treaty • Any judgement, rule of common law or equity • Any stock exchange rule • Any order of a competent court, tribunal, arbitrator or the like of any of these • Any permit, permission (e.g. planning permission) consent, licence, statutory agreement and authorisation (or the like of any of these) required by law and affecting the relevant person and its activities in connection with this Flexible Purchasing System from time to time. • Any guidance or the like issued by authorised government bodies (whether legally binding or not) • Anything else imposed by any governmental body (in its capacity as such) having a legally binding effect on the respective activities of any party in connection with this Flexible Purchasing System from time to time.
Lot	<ul style="list-style-type: none"> • Each lot of the Flexible Purchasing System described in section 2 of these Rules, and • Any additional, replacement or consolidated Lots of this Flexible Purchasing System from time to time.
Member Provider	An operator which has been admitted as a provider to any Lot from time to time.
Miscellaneous Contract	See paragraph 13.1(b).
Permitted Purchaser	Each organisation described by name or as a member of a group according to paragraph 3.1.
Personnel	In relation to a particular firm or organisation (as the context indicates), any individual genuinely appointed or otherwise engaged by that firm or other organisation and/or its Affiliate as an officer, employee, worker, consultant, trustee, elected member, member of any partnership, agent, intern, seconded person, volunteer, adviser or contractor (or anything similar to these).
Removal Event	Any event or circumstance described as such in relation to the Member Provider in section 28.
Required Accreditation	Each accreditation, licence, permit or the like which a Member Provider is required to hold according to paragraph 19.1.
Rules	These rules relating the Flexible Purchasing System, as amended from time to time.
Service Specification	The specification applicable to Call-Off Contracts generally as published from time to time by the Council.

Work Schedule

A document (whether in electronic form or otherwise) in a format from time to time

- Which sets out the specific requirements of a particular Call-off Contract (e.g. the service user's requirements, charges, etc.); and
- Which cross references this Flexible Purchasing System and/or a particular Lot of this Flexible Purchasing System; and
- Which is agreed by a particular Permitted Purchaser and a particular Member Provider in relation to the Call-Off Contract.

32. Interpretation

The parties agree to interpret these Rules as follows

Except to the extent

- The context otherwise requires; and/or
- The parties otherwise agree in writing; and/or
- Otherwise indicated elsewhere in these Rules

32.1. Headings

Headings do not affect the interpretation of these Rules.

32.2. Reference to a party

- Reference to any party is a reference to a party to these Rules.
- It includes reference to that party's successors in title and any person to whom that party assigns any of its rights, powers, benefits (or similar) under these Rules.

32.3. Consents, approvals

- Where consent, approval, permission or anything similar of a person is not to be unreasonably refused, also cannot be unreasonably delayed or subject to unreasonable conditions.
- Where consent, approval, permission or anything similar of a person is to be at that person's discretion, that person
 - Shall not be obliged to respond to a request for it; and
 - Shall not be obliged to give reasons for its decision (including any decision not to respond); and
 - Excludes (to the fullest extent permitted by Law) that person's liability to any person for any reason given for that decision (including any decision not to respond).

32.4. Definitions

If a word or phrase is defined in these Rules, its other grammatical forms have a corresponding meaning.

32.5. Statutes, codes etc.

Reference in these Rules to any statute, code or anything similar includes reference to any amending, replacing, modifying or consolidating statute, code or anything similar on substantially similar subject matter.

32.6. 'In writing'

- Use of the expression 'in writing' (or a similar word) in these Rules includes (but is not limited to) an e-mail or facsimile message or any other methods of representing words in a visible form.
- It does not include communication by telephone text messages or communication via a social media site (or anything similar to any of these).

32.7. 'Including'

- Use of the word 'including', 'in particular', 'for example' (or a similar words or expressions) in these Rules at the commencement of a list to illustrate a particular concept does not limit that concept in any way.
- Use of the abbreviation 'etc.' at the end of a list in these Rules to illustrate a particular concept does not limit that concept in any way.

32.8. Other references in these Rules

- Reference to paragraphs, sections, schedules, appendices or annexures is reference to those in these Rules.
- Reference to one gender refers to all genders.
- Reference to the singular includes the plural and vice versa.
- Reference to any particular type of body, firm or other entity includes reference to any other type of body, firm or other entity.