



## **Accommodation and Support for Young People Aged 16-25**

### **Flexible Purchasing System Rules**

**Version 1 (2019) of these Rules**

**Rotherham Metropolitan Borough Council**

## Table of Contents

1.	Introduction to these Rules .....	- 3 -
2.	Objectives .....	- 4 -
3.	Lots .....	- 4 -
4.	Permitted purchasers .....	- 5 -
5.	Duration .....	- 5 -
6.	Tier 1 Providers and Tier 2 Providers .....	- 6 -
7.	Exclusivity .....	- 6 -
8.	Guaranteed volumes .....	- 6 -
9.	Member Provider obligation to enter into Individual Call-Off Contracts .....	- 6 -
10.	Applying to become a Member Provider .....	- 7 -
11.	Feedback .....	- 10 -
12.	Awarding Individual Call-Off Contracts .....	- 10 -
13.	Procedures to enter Individual Call-Off Contracts .....	- 12 -
14.	Terms and conditions of Individual Call-Off Contracts .....	- 12 -
15.	Agreed Rates .....	- 13 -
16.	Social value .....	- 15 -
17.	Requirements to remain a Member Provider .....	- 15 -
18.	Assignment of place as a Member Provider .....	- 16 -
19.	Keeping informed .....	- 16 -
20.	Suspension of a Member Provider .....	- 18 -
21.	Announcements and publicity, use of the Council's logo .....	- 19 -
22.	Voluntary withdrawal from a Lot .....	- 19 -
23.	Removal from a Lot .....	- 19 -
24.	Member Provider Removal Events .....	- 20 -
25.	Amendments .....	- 23 -
26.	Corrupt Acts .....	- 24 -
27.	Definitions in these Rules .....	- 25 -

**Accommodation and Support for Young People Aged 16-25**

**Flexible Purchasing System Rules**

**Version 1 (2019) of these Rules**

**Rotherham Metropolitan Borough Council ('Council')**

**1. Introduction to these Rules**

1.1 The Council's role

- The Council has established a Flexible Purchasing System relating to providing Homes and Help for Young People Aged 16-25.
- The Flexible Purchasing System comprises a number of Lots.
- The Council may enter into Individual Call-Off Contracts with Member Providers of the relevant Lot from time to time.

1.2 Purpose of these Rules

These Rules govern the conduct of the Flexible Purchasing System.

1.3 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 continuously while it remains a Member Provider of the Lot.

1.4 Contractual nature of these Rules for Applicants and Member Providers

<p>By</p> <ul style="list-style-type: none"> <li>• Applying to be a member of any Lot of the Flexible Purchasing System; and/or</li> <li>• Remaining a Member Provider in relation to at least one Lot; and/or</li> <li>• Agreeing to take on a particular Individual Call-Off Contract under this Flexible Purchasing System whilst a Member Provider in relation to at least one Lot</li> </ul> <p>an Applicant or a Member Provider (as relevant, depending on whether it has been admitted to any Lot) is deemed to have accepted these Rules (as they stand at the time) in relation to its membership of that Lot.</p> <p>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.</p>
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2. Objectives

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

(a) Market sufficiency

To ensure there is a sufficient supply of quality services.
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(b) Best interests

To promote the best interests and (where appropriate) the views of service users in relation to the social care services they receive.
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(c) New entrants

To encourage new entrants into the market by allowing them access to opportunities for business with the Council without an unnecessarily long wait or an unnecessarily arduous procurement exercise.
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(d) Minimise administrative burden

To minimise the administrative burden on the Council and the Member Providers.
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(e) Cooperation

To enable the Council to work in cooperatively with Member Providers, and other stakeholders (e.g. service users) to meet objectives (e.g. improved outcomes for service users, better value for money for the Council etc.).
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(f) Legal obligations

To help enable the Council to meet its legal obligations from time to time in relation to the care of relevant service users.
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3. Lots

3.1 Current number of Lots

5 Lots (as in 2019).
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3.2 Scope and title of each Lot

<p><b>Lot 1:</b> group living (purchase by placement)</p> <p><b>Lot 2:</b> supported tenancy</p> <p><b>Lot 3:</b> floating support</p> <p><b>Lot 4:</b> family-based support and accommodation</p>
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3.3 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 existing Lots:** the Council must include Member Providers which are then members of the affected Lots in appropriate levels of engagement before making the decision.

**4. Permitted purchasers**

4.1 Who can enter Individual Call-Off Contracts with Member Providers under the Flexible Purchasing System from time to time

Only the Council or its successor bodies.

**5. Duration**

5.1 From when the Council may first enter into any Individual Call-Off Contract with a Member Provider under the Flexible Purchasing System

Anytime on or after the date when it first communicates to an operator that it has been awarded Member Provider status (whether Tier 1 Provider status or Tier 2 Provider status).

5.2 Duration of the Flexible Purchasing System

The Flexible Purchasing System will be advertised as an estimated 10-year opportunity.  
 In practice the Flexible Purchasing System will continue for as long as:

- The Council wishes to operate it; **and**
- The Council wishes to enter Individual Call-Off Contracts under it; **and**
- At least one operator wishes to remain a Member Provider and to enter Individual Call-Off Contracts under it.

This is subject to any notice periods indicated in any Tier 1 Agreement if the Council wishes to terminate a Tier 1 Provider from its status as a Tier 1 Provider.

5.3 For how long a Member Provider remains a member of any Lot in relation to the Flexible Purchasing System

(a) If it is a Tier 1 Provider of the Lot

Only for as long as it and the Council are parties to a Tier 1 Agreement from time to time.

(b) If it is a Tier 2 Provider of the Lot

For the duration of the Flexible Purchasing System described in this section 5 unless

- The Tier 2 Provider withdraws itself voluntarily from one or more Lots under section 22; or
- The Council removes the Tier 2 Provider from one or more Lots under section 23.

5.4 Consequence for the end of the Flexible Purchasing System on any Individual Call-Off Contract then in place

The end of the Flexible Purchasing System does **not** in itself automatically result in the termination of that Individual Call-Off Contract.

**6. Tier 1 Providers and Tier 2 Providers**

6.1 What is a Tier 1 Provider of a particular Lot

Any operator who from time to time

- Has been awarded Tier 1 Provider status in relation to that Lot; and
- Has a Tier 1 Agreement in place at the time with the Council.

6.2 What is a Tier 2 Provider of a particular Lot

Any Member Provider of that Lot which is **not** a Tier 1 Provider.

**7. Exclusivity**

7.1 Whether the Council is obliged to use any part of the Flexible Purchasing System **exclusively**

- The Council must observe any contractual obligations it has in any Tier 1 Agreement it has with a Tier 1 Provider regarding offering relevant business within the scope of a relevant Lot of the Flexible Purchasing System to Tier 1 Providers before making other arrangements.
- Otherwise, the Council is not obliged to use any part of this Flexible Purchasing System exclusively.

**8. Guaranteed volumes**

8.1 Whether the Council guarantees any Member Provider **any minimum volume of business** under the Flexible Purchasing System

No guaranteed minimum volumes unless indicated in any Individual Call Off Contract from time to time (e.g. in any block arrangements).

**9. Member Provider obligation to enter into Individual Call-Off Contracts**

9.1 Whether any Member Provider is contractually obliged to accept

- Any particular Individual Call-Off Contract offered by the Council; and/or
- Any minimum volume of business offered by the Council

No Member Provider is contractually obliged to do so.

**10. Applying to become a Member Provider**

10.1 How the Council will **initially** award Tier 1 Provider status and Tier 2 Provider status to Applicants **in the initial competition**  
 (not to apply to any block arrangement from time to time)

(a) In relation to Tier 1 Providers

The Council will award **Tier 1 Provider status** to Applicants who submit an Application where all of the following apply:

- The Applicant passes all of the questions in the Application Form to be evaluated on a pass-fail basis.
- The Applicant achieves at least a satisfactory score on all of the scored questions in the Application Form which require a satisfactory score.
- **If there are more than 10 Applicants at the time to whom both of the above apply:** the Applicant is one of the 10 highest scoring Applicants in relation to the scored questions in the Application Form.

(b) In relation to Tier 2 Providers

The Council will award **Tier 2 Provider status** to Applicants who submit an Application where all of the following apply:

- The Applicant passes all of the questions in the Application Form to be evaluated on a pass-fail basis.
- The Applicant achieves at least a satisfactory score on all of the scored questions which require a satisfactory score.
- **If there are more than 10 Applicants at the time to whom both of the above apply:** the Applicant is **not** one of the 10 highest scoring Applicants.

10.2 If any Applicants are tied

The Applicant with the highest score on price shall prevail.

10.3 Right of the Council to change the number of Tier 1 Providers on a particular Lot from time to time

- The Council may do so.
- If the Council reduces the number of Tier 1 Providers on a particular Lot, it can only do so by terminating Tier 1 Agreements according to the terms of those Tier 1 Agreements.
- If the Council increases the number of Tier 1 Providers on a particular Lot, it must run a suitable competition for other operators for the additional places.

10.4 How the Council will award Tier 1 Provider status and Tier 2 Provider status to Applicants **from time to time**

(a) If a Tier 1 Provider discontinues in that status from time to time in relation to a particular Lot

E.g. voluntarily withdraws or is removed by the Council, or any other reason

The Council is not obliged to replace that Tier 1 Provider. But if it does wish to replace it with another operator, the Council may offer the place to a Tier 2 Provider of the Lot as follows:

- **If 2 years or less has passed since the last contest for Tier 1 Provider places on the relevant Lot:** the Council may award the relevant place to the next highest scoring Tier 2 Provider on that Lot. The Council may conduct a competitive procedure instead if it wishes to do so.
- **If more than 2 years has passed since the last contest for Tier 1 Provider places on the relevant Lot:** the Council must conduct a competitive procedure for the remaining place.

(b) When the Council will run **new competitions** from time to time to determine the Tier 1 Providers of a particular Lot

The Council must do so promptly after the Council gives notice to terminate all Tier 1 Agreements at or around the same time, as follows:

- The Council **may** terminate the Tier 1 Agreements **at any time (other than in the first 12 months) with at least 3 months' notice** regardless of whether requested to do so by a Tier 1 Provider or a Tier 2 Provider.
- The Council **must** terminate all of the Tier 1 Agreements of the relevant Lot **with 3 months' notice** (or such longer time as is necessary to conduct a new competition for Tier 1 Provider status) **if required to do so in writing by any Tier 1 Provider or any Tier 2 Provider at any time at the windows indicated in item (c).**

(c) Windows when any Tier 1 Provider or any Tier 2 Provider may (in writing) require the Council to do the following (for the purposes of item (b)):

- Terminate all of the Tier 1 Agreements of a particular Lot; and
- Conduct a new competition for Tier 1 Provider status for that Lot

- Each alternate September (i.e. from 1<sup>st</sup> September to 30<sup>th</sup> September inclusive every **2 years**) after the end of the 4 year period indicated below
- **Exception:** a Tier 1 Provider or a Tier 2 Provider may not make this request in any September which is less than **4 years** after the date on which each Tier 1 Agreement of the relevant Lot which is then in place was entered. If the Tier 1 Agreements in place at the time were entered on different dates, this 4-year period runs from the date of the latest of them to be entered. The Tier 1 Agreement of any Tier 1 Provider who has been later added to the Tier 1 Provider list for the relevant Lot as a temporary replacement is not to be included for the purpose of calculating this 4-year period.
- The above arrangement repeats after the Council has entered into new Tier 1 Agreements as a result of this new competition for places as Tier 1 Providers on the relevant Lot. The 4-year period described above recommences before the next September window reopens.

(d) How a Tier 1 Provider or a Tier 2 Provider can require the Council to take the action indicated at the times indicated in item (c)	Through the Council's electronic procurement portal, or as the Council reasonably directs from time to time.
(e) Who may take part in new competitions	Any operator, whether or not already a Member Provider on the relevant Lot.
(f) Whether the Council may simultaneously conduct new competitions for 2 or more Lots	The Council may do so but is not obliged to do so.
(g) How the Council will award Tier 1 Provider status and Tier 2 Provider status <b>in new competitions</b>	<ul style="list-style-type: none"> <li>• In the same way as it does with the initial competition, as indicated in item 10.1.</li> <li>• However, the Council may change the questions from time to time, as reasonably necessary taking into account changing circumstances.</li> </ul>
(h) Applying to become a Tier 2 Provider from time to time	<ul style="list-style-type: none"> <li>• The Flexible Purchasing System is expected to be constantly open after the relevant date published by the Council.</li> <li>• Any operator may apply to join any Lot of the Flexible Purchasing System at any time <b>as a Tier 2 Provider</b>.</li> </ul>
10.5 Whether there is to be a <b>maximum number of Tier 2 Providers</b> in relation to any Lot	No maximum.
10.6 Whether there is any minimum or maximum number of Lots for which a prospective Member Provider may apply and be awarded Tier 1 Provider status or Tier 2 Provider status	No minimum or maximum number.
10.7 If an Applicant is already a Member Provider on at least one Lot, whether it may later apply to become a Member Provider of another Lot	<ul style="list-style-type: none"> <li>• The Applicant may do so.</li> <li>• The Council may waive any requirements in a later Application Form if the Applicant has satisfactorily met those requirements in an earlier Application in relation to another Lot.</li> </ul>
10.8 When decisions are communicated by the Council to Applicants on the outcome of their Applications	<ul style="list-style-type: none"> <li>• At times published by the Council.</li> <li>• These times are to be regarded as estimates only.</li> <li>• The Council may encounter delays outside its reasonable control in evaluating applications (e.g. staff illness, high volumes of applications).</li> </ul>
10.9 If an Applicant's Application is unsuccessful, whether the Applicant may reapply	<ul style="list-style-type: none"> <li>• No restrictions on it doing so.</li> <li>• The Council may impose a charge of up to £350 (to cover the Council's evaluation costs) if the Applicant reappplies (or if its Affiliate applies or reappplies) after having failed twice in the same rolling 12-month period.</li> <li>• The Council shall refund this charge if the application or reapplication is successful.</li> </ul>
10.10 How Applicants take part in competitions for any block arrangement from time to time	See item 12.1.

**11. Feedback**

11.1 Feedback arrangements in relation to an Applicant's Application

- The Council will provide feedback to a prospective Member Providers (whether successful or unsuccessful) but only to the extent required by Law.
- The Council may provide any other feedback which is not specifically required by Law at the Council's discretion.

**12. Awarding Individual Call-Off Contracts**

12.1 How each Individual Call-Off Contract is to be awarded under the Flexible Purchasing System **on a block basis** in relation to one or more particular Lots

- **If the Council is permitted (under relevant procurement law and under the Council's constitution) to directly award the Call-off Contract to a specific operator:** by direct award.
- **Otherwise:** by a suitable mini-competition exercise between Tier 1 Providers and Tier 2 Providers of that Lot (or those Lots), where that exercise meets the requirements of relevant procurement law and the Council's constitution.

12.2 How each Individual Call-Off Contract is to be awarded under the Flexible Purchasing System **for the placement of a specifically-named service user – FIRST STEP: direct award**

(a) Right to directly award where in best interests etc.

The Council may directly award the Individual Call-Off Contract to a particular Member Provider (or to any other operator in extenuating circumstances e.g. a placement outside the Borough) where

- In the professional opinion of the Council's officers, it is in the best interests of the service user to be placed with that operator.
- The Council has given appropriate weight to the wishes of the service user (taking into account his/her age, capacity and other relevant factors).

(b) Other direct award

The Council may also directly award the Individual Call-Off Contract to a particular operator **in other circumstances** where the Council is permitted to do so according to public procurement law and the Council's constitution at the time.

(c) To whom the Council may make the direct awards indicated in item (a) or item (b)

The Council may award the Individual Call-Off Contract to that Member Provider **regardless** of whether it is a Tier 1 Provider or a Tier 2 Provider.

12.3 How each Individual Call-Off Contract is to be awarded under the Flexible Purchasing System **for the placement of a specifically-named service user – SECOND STEP** if the Individual Call-Off Contract is not awarded under item 12.2 – **expressions of interest from Tier 1 Providers**

(a) Who the Council will invite

The Council will invite all Tier 1 Providers of the relevant Lot to submit expressions of interest regarding the service user.

(b) Deadline to respond	As indicated in the relevant Tier 1 Agreement at the time.
(c) Obligation to respond	<p>Tier 1 Providers on the relevant Lot <b>are not obliged</b> to respond to that invitation</p> <ul style="list-style-type: none"> <li>• In relation <b>any particular</b> service user or</li> <li>• In relation to <b>any minimum number</b> of service users.</li> </ul>
(d) Criteria which the Council will use to evaluate responses	<ul style="list-style-type: none"> <li>• The Council will evaluate responses to the invitation from Tier 1 Providers according to the following evaluation criterion: <p style="text-align: center;"><i>The successful bidding Tier 1 Provider will be the one whose response best meets the needs of service user, according to the professional opinion of the Council's evaluators.</i></p> </li> <li>• The Council may change the evaluation criteria for a particular Individual Call-Off Contract from time to time. If it does so, it will indicate the relevant criteria when it issues the relevant invitation.</li> </ul>

12.4 How each Individual Call-Off Contract is to be awarded under the Flexible Purchasing System **for the placement of a specifically-named service user – THIRD STEP** if the Individual Call-Off Contract is not awarded under item 12.3 - **competition between Tier 1 Providers and Tier 2 Providers**

(a) Invitation	The Council will invite <b>all Tier 1 Providers and Tier 2 Providers</b> of the relevant Lot to submit expressions of interest regarding the service user.
(b) Deadline to respond	The Council will indicate at the time a deadline for Tier 1 Providers and Tier 2 Providers to respond to that invitation.
(c) Obligation to respond	<p>Tier 1 Providers and Tier 2 Providers on the relevant Lot <b>are not obliged</b> to respond to that invitation</p> <ul style="list-style-type: none"> <li>• In relation <b>any particular</b> service user or</li> <li>• In relation to <b>any minimum number</b> of service users.</li> </ul>
(d) Criteria which the Council will use to evaluate responses	<ul style="list-style-type: none"> <li>• The Council will evaluate responses to the invitation from Tier 1 Providers and Tier 2 Providers according to the following evaluation criterion: <p style="text-align: center;"><i>The lowest price response that adequately meets the needs of service user, according to the professional opinion of the Council's evaluators.</i></p> <p style="text-align: center;"><i>This is according to the latest rates which the Tier 1 Providers and Tier 2 Providers had most recently submitted to the Council at the time or had otherwise agreed with the Council.</i></p> </li> <li>• The Council may change the evaluation criteria for a particular Individual Call-Off Contract from time to time. If it does so, it will indicate the relevant criteria at the time it issues the relevant invitation.</li> </ul>

- 12.5 When a Member Provider will **not** be invited to take part
- In the second step indicated in item 12.3, or
  - In the third step indicated in item 12.4.

If (at the time) any of the following applies

- The Member Provider is suspended from the relevant Lot and/or from the Flexible Purchasing System generally according to section 20; and/or
- If the Member Provider has voluntarily withdrawn from the relevant Lot and/or from the Flexible Purchasing System generally under section 22.
- If the Member Provider has been removed from the relevant Lot and/or from the Flexible Purchasing System generally under section 23.

- 12.6 How **changes** to the procedures described in item 12.3 and in item 12.4 are to be made by the Council

The Council (wishing to make those changes)

- 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.

**13. Procedures to enter Individual Call-Off Contracts**

- 13.1 Procedures for the Council **to enter into Individual Call-Off Contracts** under the Flexible Purchasing System

As indicated in the General Specification or as otherwise communicated by the Council from time to time.

**14. Terms and conditions of Individual Call-Off Contracts**

- 14.1 The terms and conditions of each Individual Call-Off Contract
- Comprise all of the following
  - Unless otherwise agreed in writing between the Council and the Member Provider
  - As listed in order of priority if there are inconsistencies

(a) Individual Placement Agreement

This contains the specific requirements of the Individual Call-Off Contract including the service user's personal details and other supporting documents.

(b) General Specification

Any General Specification which applies to the relevant Lot at the time.

(c) Call-off terms and conditions

As published by the Council at the time.

(d) Cross referenced

- Any other documents (including the contents of any website) which are cross-referenced in any of the documents described elsewhere in item (a), item (b) and/or item (c) to the extent these have been sufficiently communicated by the Council to the Member Provider in writing.
- For this purpose, if a website is cross-referenced, it will have been sufficiently communicated to the Member Provider if the relevant link has been communicated.

(e) Member Provider response

Any and all responses submitted by the Member Provider in connection with:

- Its application to become a Member Provider in relation to the relevant Lot; and
- The award of the Individual Call-Off Contract specifically (e.g. any kind of proposal, method statement or the like of any of these).

These may override any of the other items indicated elsewhere in this item 14.1 if the Council decides at its discretion (e.g. if it considers any of these responses to be more favourable).

14.2 How amendments are to be made to the terms and conditions of any Individual Call-Off Contract (as described in item 14.1) **after** that Individual Call-Off Contract has been entered

- According to the requirements of the terms and conditions that apply at the time.
- The current requirements require written agreement between the Council and the relevant Member Provider.

**15. Agreed Rates**

15.1 Agreed Rates payable by the Council to a Member Provider under each Individual Call-Off Contract in relation to a particular Lot

(this does not apply to block contracts – arrangements in relation to block contracts are indicated in item 15.3)

(a) Initially

As indicated in the Member Provider's Application.

(b) From time to time

At the Member Provider's Agreed Rates are revised from time to time as follows:

- According to item 15.2; or
- According to any new competition which the Council conducts from time to time to determine Tier 1 Provider status and Tier 2 Provider status for the relevant Lot according to item 10.4.

15.2 About changes to a Member Provider's rates from time to time for the purposes of item 15.1(b) in relation to a particular Lot

(a) How the Member Provider's Agreed Rates change from time to time

As negotiated and agreed in writing by the Member Provider and the Council I from time to time.

(b) How the Member Provider initiates negotiations described in item (a)	<p>By giving the Council proposals for revised Agreed Rates</p> <ul style="list-style-type: none"> <li>• Through the Council's electronic procurement portal.</li> <li>• At the times indicated in item (d).</li> </ul>
(c) Obligations of the Council in relation to a proposal to change Agreed Rates which the Council receives (from time to time at the times indicated in item (d)) from the Member Provider in relation to a particular Lot	<ul style="list-style-type: none"> <li>• The Council must consider that proposal in good faith.</li> <li>• The Council is not obliged to agree to the proposal. It is a matter of commercial negotiation between the Member Provider and the Council.</li> </ul>
(d) Times when the Council will consider proposals from each Member Provider to revise its Agreed Rates in relation to a particular Lot for the purposes of item 15.1(b)	<ul style="list-style-type: none"> <li>• Every 2 years, a Member Provider may submit a proposal for revised Agreed Rates.</li> <li>• The Council will only consider a proposal of a Member Provider if the Member Provider submits that proposal <b>between 1<sup>st</sup> October and 30<sup>th</sup> November inclusive in an odd-numbered year</b> from and including 2021.</li> </ul>
(e) Whether a Member Provider <b>is obliged</b> to issue the Council with proposals to revise its Agreed Rates in relation to a particular Lot at any particular time	<p>No Member Provider is obliged to do so.</p>
(f) Consequences for a Member Provider in relation to a particular Lot if the Member Provider and the Council agree in writing to change the Member Provider's Agreed Rates in relation to a particular Lot	<ul style="list-style-type: none"> <li>• The changed Agreed Rates as agreed shall apply from the next <b>1<sup>st</sup> April</b> to the following in relation to that Lot: <ul style="list-style-type: none"> <li>- To the Member Provider's existing Individual Call-off Contracts.</li> <li>- To the Member Provider's future Individual Call-off Contracts.</li> </ul> </li> <li>• <b>If the Council and the Member Provider agree to the changes after the next 1<sup>st</sup> April:</b> the new Agreed Rates apply <b>retrospectively</b>: <ul style="list-style-type: none"> <li>- To each relevant Individual Call-Off Contract which the Member Provider and the Council have in place.</li> <li>- From the date the changes are agreed, and retrospectively back to the immediately previous 1<sup>st</sup> April.</li> </ul> </li> </ul>
(g) Consequences for a Member Provider in relation to a particular Lot if at a particular time <ul style="list-style-type: none"> <li>• The Member Provider does not issue a proposal to revise its Agreed Rates; or</li> <li>• The Member Provider and the Council do not agree to change the Member Provider's Agreed Rates</li> </ul>	<p>That Member Provider's existing Agreed Rates in relation to relevant Lot continue to apply until the Member Provider and the Council agree to change those Agreed Rates according to this item 15.2.</p>
(h) How the Council is to treat negotiations with a Member Provider in relation to revised Agreed Rates	<p>The Council must treat any such negotiations as commercially sensitive for the purposes of the Law relating to freedom of information.</p> <p><b>Exception:</b> to the extent otherwise required by Law.</p>

(i) Whether changes to a Member Provider's Agreed Rates agreed according to this item 15.2 affects its **status as a Tier 1 Provider or a Tier 2 Provider**

- No, the changes to Agreed Rates agreed **according to this item 15.2** does not in itself affect the Member Provider's status as a Tier 1 Provider or a Tier 2 Provider at the time.
- However, if and when the Council conducts a new competition between operators for Tier 1 Provider status and Tier 2 Provider status (according to item 10.4):
  - Operators participating in that new competition will be given an opportunity to submit completely new Agreed Rates as part of that new competition.
  - Those new Agreed Rates (as submitted) will be evaluated as part of the Council's determination on awarding Tier 1 Provider status and Tier 2 Provider status as a result of that new competition.
  - Those new Agreed Rates will apply to new and existing Individual Call-Off Contracts of the relevant operator after completion of that new competition.

15.3 Arrangements regarding charges in relation to any Individual Call-Off Contract which is awarded as **block contracts**

The arrangements regarding charges (including changes to charges) will be

- Determined on a case-by-case basis, and
- Indicated in the relevant Individual Call-Off Contract.

## 16. Social value

16.1 Social value obligations of the Member Provider while a member of the Flexible Purchasing System

- As indicated in the terms and conditions of the Individual Call-Off Contract.
- These only apply if and for as long as the Member Provider is a party to an Individual Call-Off Contract at the time

## 17. Requirements to remain a Member Provider

17.1 Indicate any **Required Accreditations** which a Member Provider must meet at all times to remain a member of a particular Lot  
Indicate the specific requirements if any for each Lot

Only those if any which the Member Provider is required to hold by Law at the time to provide the relevant services.

17.2 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  
Indicate the specific requirements if any for each Lot

- **Employers' liability:** £10 million or such higher level required by Law.
- **Public liability:** £10 million
- **Professional indemnity:** £5 million

17.3 Circumstances where a Member Provider is not required to have the insurance cover indicated in item 17.2

- 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).

**18. Assignment of place as a Member Provider**

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

- It may do so only with the prior written consent of the Council.
- That consent shall not be unreasonably withheld, unreasonably delayed or subject to unreasonable conditions.

18.2 Example of reasonable grounds for the Council to refuse consent for the purposes of item 18.1 (not to exclude other reasonable grounds for the Council to do so)

- If the assignee
- Fails any of the questions in the Application Form at the time which are to be evaluated on a pass-fail basis; and/or
  - Fails to achieve a satisfactory score on all of the scored questions in the Application Form at the time which require a satisfactory score.

**19. Keeping informed**

19.1 Events or circumstances on which the Member Provider must keep the Representative of the Council informed under this section 19

- 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 keep the Representative (or other appropriate Personnel of the Council) informed in a proper and timely manner of significant progress of events as they occur in relation to the relevant matter

(a) Any event or circumstance to which both of the following apply

(i) 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 Individual Call-Off Contract.

(ii) Adverse publicity

If the event or circumstance were publicly known, it would create an unreasonable risk of serious, unjustified and unfavourable publicity to the Council due to its association with the Member Provider.

(b) 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 item 17.1.

(c) Insurance	<p>The Member Provider not having in place all of the required insurance (to the minimum level) as indicated in item 17.2.</p> <p><b>Exception:</b> to the extent the Member Provider is exempt under item 17.3.</p>								
(d) Any of the following if the Member Provider is a <b>human being acting as a sole trader</b>	<table border="1"> <tr> <td data-bbox="279 436 794 571">(i) Bankruptcy</td> <td data-bbox="794 436 1519 571"> <ul style="list-style-type: none"> <li>• The Member Provider's bankruptcy and/or</li> <li>• Any bankruptcy proceedings being commenced against the Member Provider.</li> </ul> </td> </tr> <tr> <td data-bbox="279 571 794 728">(ii) Charge, conviction</td> <td data-bbox="794 571 1519 728"> <p>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).</p> </td> </tr> <tr> <td data-bbox="279 728 794 817">(iii) Right to remain</td> <td data-bbox="794 728 1519 817"> <p>The Member Provider no longer having right to remain in the United Kingdom.</p> </td> </tr> </table>	(i) Bankruptcy	<ul style="list-style-type: none"> <li>• The Member Provider's bankruptcy and/or</li> <li>• Any bankruptcy proceedings being commenced against the Member Provider.</li> </ul>	(ii) Charge, conviction	<p>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).</p>	(iii) Right to remain	<p>The Member Provider no longer having right to remain in the United Kingdom.</p>		
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(f) If the Member Provider is a consortium, partnership or the like, any of the following	<table border="1"> <tr> <td data-bbox="279 1646 794 1713">(i) Change</td> <td data-bbox="794 1646 1519 1713"> <p>Any change in the composition of its membership.</p> </td> </tr> <tr> <td data-bbox="279 1713 794 1848">(ii) Events affecting members</td> <td data-bbox="794 1713 1519 1848"> <p>Any of the events or circumstances indicated elsewhere in this section 19 in relation to the Member Provider applies to any of its members individually.</p> </td> </tr> </table>	(i) Change	<p>Any change in the composition of its membership.</p>	(ii) Events affecting members	<p>Any of the events or circumstances indicated elsewhere in this section 19 in relation to the Member Provider applies to any of its members individually.</p>				
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(ii) Events affecting members	<p>Any of the events or circumstances indicated elsewhere in this section 19 in relation to the Member Provider applies to any of its members individually.</p>								
(g) Safeguarding investigations	<p>Any safeguarding investigations affecting the Member Provider and/or its Affiliates, whether in relation to activities connected with this Flexible Purchasing System or otherwise.</p>								
(h) Corrupt Acts	<p>Any breach by the Member Provider of section 26 relating to Corrupt Acts.</p>								

**20. Suspension of a Member Provider**

20.1 The Council may suspend a Member Provider from any one or more Lots 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 Individual Call-Off Contract in place at the time.
- This applies regardless of the Lot to which the Individual Call-Off Contract relates.

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

(i) Non-routine investigation

- The Member Provider and/or its Affiliate is 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 regardless of whether or not the investigation relates to activities connected with any Individual 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 Council and/or its Affiliate breaching any genuine existing arm's length duty of care to another person.
- Serious, unjustified and unfavourable publicity to the Council and/or its Affiliate.

20.2 How the Council exercises its rights to suspend the Member Provider from the relevant Lot

- By communicating the matter in writing to the Member Provider.
- The communication must indicate the reasons for the suspension.

20.3 Consequences of a Member Provider's suspension from the relevant Lot

- That Member Provider shall not be eligible to enter into any Individual Call-Off Contract with a Council during its suspension.
- Existing Individual Call-Off Contracts remain unaffected by the suspension itself.

20.4 For how long the Council may suspend the Member Provider from the relevant Lot

Until the Council is reasonably satisfied that the relevant circumstances in item 20.1 **no longer applies**.

20.5 Whether suspension of the Member Provider limits any person's rights and remedies in relation to the circumstances described in item 20.1

No.

E.g. the rights of the Council to exercise any rights under its Individual Call-Off Contracts such as termination rights, if any

**21. Announcements and publicity, use of the Council's logo**

21.1 Any restrictions on a Member Provider issuing any announcement, press release, public circular (or anything like these) regarding the Member Provider's status as a Tier 1 Provider and/or a Tier 2 Provider on a particular Lot

- The Member Provider must not do so without the prior written permission of the Council.
- The Council must not unreasonably refuse or delay that permission, nor impose any unreasonable conditions on that permission.

21.2 Right of a Member Provider to use any logo, livery or the like of the Council in providing any services under any Individual Call-Off Contract

- The Member Provider must not do so without the prior written permission of the Council.
- The Council may give or refuse that permission at its discretion.

**22. Voluntary withdrawal from a Lot**

22.1 Whether a Member Provider may voluntarily withdraw its membership of

- Any particular Lot and/or
- The Flexible Purchasing System as a whole

- 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. It may simply refuse to accept further Individual Call-Off Contracts.

22.2 If a Member Provider voluntarily withdraws from any Lot under item 22.1, whether it may be readmitted to that Lot if it wishes

- Yes.
- However, the Member Provider will be expected to reapply as if it were a new Applicant.

**23. Removal from a Lot**

23.1 Whether the Council may remove a Member Provider from a particular Lot

The Council may do so (but shall not be obliged to do so) if and for as long as any Removal Event (defined in section 24) applies to the Member Provider at the time.

23.2 How the Council exercises its rights to remove the Member Provider from the relevant Lot

- By communicating the matter in writing to the Member Provider.
- The communication must describe the relevant Removal Event to which the removal relates.

23.3 If the Member Provider's Removal Event applies to a particular Lot, whether the Council may remove the Member Provider from any other Lot in relation to which the Member Provider is a member

The Council may do so but is not obliged to do so.

23.4 Consequence of the Removal Event on existing Individual Call off Contracts

- It shall not in itself affect existing Individual Call-off Contracts then in place.
- This does not limit any person's rights and remedies under that Individual Call-off Contract (e.g. separate terminate rights, if any) in the circumstances.

23.5 Whether removal of the Member Provider under this section 23 limits the Council's rights and remedies in relation to the relevant Removal Event  
  
(e.g. any rights to terminate any Individual Call-Off Contract)

No.

23.6 Right of the Member Provider and/or its Affiliate to apply for readmission to the relevant Lot if the Member Provider has been removed from that Lot under this section 23

- The Member Provider or its Affiliate must undertake the normal application process that applies at the time.
- The Council may (acting reasonably and proportionately)
  - May seek additional assurances from the Member Provider or its Affiliate; and/or
  - May take other additional steps to satisfy itself

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.
- The Council may impose a charge (not exceeding **£350**) for its officer time in seeking such additional assurances and taking such additional steps as described above. This charge is refundable if the application is successful.

**24. Member Provider 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

24.1 Failure to pay debts

If and for as long as the Member Provider and/or its Affiliate has still not yet fully paid the following:

- Any overdue debt owed to the Council or its Affiliate
- Within **14 days** of being demanded to do so
- Whether or not that debt is connected with any Individual Call-Off Contract
- Subject to rights of set off, deduction or counterclaim which the Member Provider and/or its Affiliate has in relation to that debt (if any)
- But only where that overdue debt is not subject to a genuine dispute which the Member Provider and/or its Affiliate is using reasonable endeavours in good faith to attempt to resolve.

24.2 Insurance

- The Member Provider does not have in place the insurance cover required in item 17.2 at any time whilst it is providing any services under any Individual Call-Off Contract under the Flexible Purchasing System.
- **Except** to the extent the Member Provider is exempt under item 17.3 at the time.

24.3 Serious misconduct

- The Member Provider and/or its Affiliate has engaged in serious misconduct
- Such misconduct includes without limitation
  - The Member Provider’s (and/or the Affiliate’s) involvement in a serious public scandal (whether or not in connection with any Individual Call-Off Contract); and
  - Where a reasonable person would not expect the Council to continue retain the Member Provider as a member of the Flexible Purchasing System due to the association.

24.4 **Misconduct in Application:** the Member Provider has engaged in serious misconduct

- in relation to
  - Its Application to become a Member Provider; and/or
  - The award of any Individual Call-Off Contract under the Individual 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

Engaging in any collusive or other anti-competitive conduct with other operators (who may or may not apply to become Member Providers).

(b) Corrupt Act

Doing any act in connection with that competitive exercise that would breach section 26 in relation to Corrupt Acts.

(c) Canvassing

Engaging in any canvassing activity with officers and/or elected members of a Council and/or its Affiliate.

24.5 Loss of Required Accreditation

The Member Provider does not (for any reason) hold any Required Accreditation which it is required to hold under item 17.1 according to the following

- **If the Member Provider is required by Law to hold that Required Accreditation to provide any services under any Individual 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 no longer be a Removal Event if the Member Provider subsequently re-acquires it before the Member Provider’s removal).

24.6 Corrupt Act

The Member Provider’s breach of section 26.

24.7 Change in control

<p>Where all of the following apply:</p> <ul style="list-style-type: none"> <li>• The Member Provider is a company with share capital.</li> <li>• There is a change in the majority underlying control of the Member Provider.</li> <li>• That change in control is not the result of the purchase of shares in the Member Provider on a public stock exchange.</li> <li>• The Council has raised objections (with reasonable grounds) to that change in control as follows <ul style="list-style-type: none"> <li>- In writing through the Council's electronic procurement portal,</li> <li>- Not later than <b>30 days</b> of having first been sufficiently informed of the change in control.</li> <li>- For this purpose, the Council shall not be regarded as being sufficiently informed of the change if the Council has raised genuine questions and/or requests for further information with the Member Provider about the change.</li> </ul> </li> </ul>
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24.8 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.
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(b) Certain convictions

<p>The Member Provider is convicted of</p> <ul style="list-style-type: none"> <li>• Any crime of violence, dishonesty and/or relating to safeguarding</li> <li>• Any other offence resulting in a prison sentence (whether suspended or served).</li> </ul>
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(c) Death

The Member Provider dies.
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(d) Significant disability

The Member Provider suffers total and permanent disability.
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(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 meanings of sections 94(2) or 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.
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24.9 Right to operate in the UK

The Member Provider is not permitted to operate the relevant services in the UK for any reason.
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24.10 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.
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24.11 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 has the same underlying majority controlling ownership as the Member Provider.

24.12 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.

24.13 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.

24.14 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

Any of the events or circumstances described elsewhere in this section 24 applies to any member at the time of the consortium, partnership or the like.

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

- 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 the Council's electronic procurement portal.

## 25. Amendments

25.1 How **these Rules** are to be amended from time to time  
(except to the extent indicated elsewhere in these Rules)

- As those amendments are published by the Council from time to time with the Council having given Member Providers at least **28 days** prior notice before the amendments come into effect.
- This period gives a Member Provider enough time to withdraw its membership of the Flexible Purchasing System under section 22 if it wishes to do so.

<p>25.2 How amendments are to be made to the following</p> <ul style="list-style-type: none"> <li>To the General Specification that applies to the relevant Lot; and/or</li> <li>To the call-off terms and conditions that apply to the relevant Lot</li> </ul>	<p>By the Council</p> <ul style="list-style-type: none"> <li>Having communicated the matter to each Member Provider.</li> <li>Having appropriately engaged the Member Providers generally.</li> <li>Having given Member Providers at least <b>28 days</b> prior notice before the amendments come into effect.</li> </ul> <p>Such amendments immediately apply to <b>new</b> Individual Call-Off Contracts entered <b>after</b> the amendment is made</p>
<p>25.3 Whether amendments to the described in item 25.2 <b>apply retrospectively</b> to an existing Individual Call-Off Contract</p>	<ul style="list-style-type: none"> <li>No.</li> <li>Except to the extent the Council and the Member Provider agree (at their discretion) according to the requirements for amending Individual Call-Off Contracts in the relevant call-off terms and conditions.</li> </ul>

**26. Corrupt Acts**

<p>26.1 Obligations of the Member Provider in relation to Corrupt Acts</p>	<p>The Member Provider must not do any of the following in connection with its membership of the Flexible Purchasing System and/or in connection with any Individual Call-Off Contract it has in place from time to time</p> <ul style="list-style-type: none"> <li>Carry out any Corrupt Act</li> <li>Assist or instruct another person to carry out any Corrupt Act.</li> </ul>
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26.2 Definition of a '**Corrupt Act**':  
Any of the following acts (to be read independently)

(a) Certain offers

<p>The act is a direct or indirect offer or promise to which all of the following apply</p> <ul style="list-style-type: none"> <li>It is made to any Personnel of the Council and/or its Affiliate</li> <li>It offers or promises any benefit or advantage (whether or not financial)</li> <li>The offer or promise is substantially for any of the following purposes <ul style="list-style-type: none"> <li>To encourage that Personnel to carry out his/her duties improperly.</li> <li>To reward that Personnel for having carried out his/her duties improperly.</li> </ul> </li> </ul>
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(b) Policy

<ul style="list-style-type: none"> <li>Any act which breaches any policy of a Council and/or its Affiliate from time to time regarding gifts to its Personnel</li> <li>But only to the extent the policy is communicated in writing to the Member Provider.</li> </ul>
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(c)	Certain offences	<p>In relation to the Member Provider's dealings with a Council and/or its Affiliate in connection with its membership of the Flexible Purchasing System and/or in connection with any Individual Call-Off Contract it has in place from time to time</p> <ul style="list-style-type: none"> <li>• Any offence under the Bribery Act.</li> <li>• Any other offence under any Law relating to fraud.</li> </ul>
(d)	Serious attempts	Any serious attempt by any Personnel of the Member Provider and/or its Affiliate to do anything indicated elsewhere in this item 26.2.

**27. Definitions in these Rules**

(a)	Affiliate	<ul style="list-style-type: none"> <li>• 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.</li> <li>• For the purposes of these Rules, 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.</li> </ul>
(b)	Agreed Rates	The rates offered by a Member Provider from time to time in relation to Individual Call-Off Contracts it enters under the Flexible Purchasing System, according to section 15 of these Rules.
(c)	Applicant	An operator applying to become a Member Provider of any Lot of the Flexible Purchasing System.
(d)	Application	An Applicant's response to questions or requests for information or clarifications (or anything like these) raised in an Application Form.
(e)	Application Form	<p>The form published by the Council from time to time</p> <ul style="list-style-type: none"> <li>• To admit operators to any one or more Lots of the Flexible Purchasing System.</li> <li>• To conduct any contest from time to time between Member Providers of a particular Lot to determine which of them are to be Tier 1 Providers of one or more Lots.</li> </ul>
(f)	Corrupt Act	See item 26.2.
(g)	Flexible Purchasing System	<p>The flexible purchasing system described in these Rules</p> <ul style="list-style-type: none"> <li>• Currently comprising the Lots described in section 3 of these Rules, and</li> <li>• Any additional, replacement or consolidated Lots from time to time.</li> </ul>

(h)	General Specification	<ul style="list-style-type: none"> <li>• Any specification published by the Council from time to time that describes the requirements of the Council in relation to the Individual Call-Off Contracts of a particular Lot generally (and not the specific requirements of a particular Individual Call-Off Contract).</li> <li>• As amended under section 25 of these Rules.</li> </ul>
(i)	Individual Call-Off Contract	<p>Each contract (including any contract involving a block arrangement) entered from time to time between the Council and a Member Provider:</p> <ul style="list-style-type: none"> <li>• In connection with any Lot of the Flexible Purchasing System.</li> <li>• According to the procedures described in section 13 of these Rules.</li> </ul>
(j)	Individual Placement Agreement	<p>A document (whether in electronic form or otherwise) in a format from time to time</p> <ul style="list-style-type: none"> <li>• Which sets out the specific requirements of a particular Individual Call-Off Contract (e.g. the service user's requirements, charges, etc.); and</li> <li>• Which cross references this Flexible Purchasing System and/or a particular Lot of this Flexible Purchasing System; and</li> <li>• Which is agreed by a particular Council and a particular Member Provider.</li> </ul>
(k)	Law	<p>Any of the following to the extent applicable to the Council and/or to a particular Applicant and/or to a particular Member Provider from time to time (to be read independently)</p> <ul style="list-style-type: none"> <li>• Any statute, regulation, bye-law, order, subordinate legislation or the like of any of these.</li> <li>• Any directive or other European instrument (to the extent it is binding on the party)</li> <li>• Any treaty</li> <li>• Any judgement, rule of common law or equity</li> <li>• Any stock exchange rule</li> <li>• Any order of a competent court, tribunal, arbitrator or the like of any of these</li> <li>• 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 the Flexible Purchasing System from time to time.</li> <li>• Any guidance or the like issued by authorised government bodies (whether legally binding or not)</li> <li>• 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.</li> </ul>

(l)	Lot	<ul style="list-style-type: none"> <li>• Each Lot described in section 3 of these Rules, and</li> <li>• Any additional, replacement or consolidated Lots of this Flexible Purchasing System from time to time.</li> </ul>
(m)	Member Provider	In relation to a Lot, an operator which has been admitted as (and which remains at the time) a Tier 1 Provider or a Tier 2 Provider on that Lot.
(n)	Removal Event	Any event or circumstance described as such in relation to the Member Provider in section 24.
(o)	Required Accreditation	Each accreditation, licence, permit or the like which a Member Provider is required to hold according to item 17.1.
(p)	Rules	These rules relating the Flexible Purchasing System, as amended from time to time according to section 25.
(q)	Tier 1 Agreement	An agreement entered from time to time between the Council and a Tier 1 Provider setting out their respective rights and obligations in relation to the Tier 1 Provider's status as such in relation to any one or more Lots (other than any block arrangement).
(r)	Tier 1 Provider	See item 6.1.
(s)	Tier 2 Provider	See item 6.2.