



**Northumberland**  
County Council

**Provision of Passenger Transport Services  
Dynamic Purchasing System  
DN124758**

**Rules**

**Version 1 (2020)**

**Northumberland County Council (Lead)**

**Northumbria Healthcare Foundation Trust**

**North Cumbria University Hospitals NHS Trust**

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**Provision of Passenger Transport Services**  
**Dynamic Purchasing System**  
**DN124758**  
**Rules - Version 1 (2020)**

**1. Introduction to these Rules**

1.1 What is a Dynamic Purchasing System

It is a dynamic purchasing system established by a contracting authority under regulation 34 of the Public Contracts Regulations 2015

It allows:

- Each 'Permitted Purchaser' indicated in item 3.1 to purchase relevant services from time to time.
- Operators to join the system from time to time, to be eligible to participate in contests and to enter Call-Off Contracts under the system.

1.2 About the DPS

- These Rules apply to a number of Lots described in section 2 relating to the provision of certain transport services.
- Each Lot comprises a '**Dynamic Purchasing System**'.
- In these Rules, '**DPS**' means the Dynamic Purchasing System. Reference to the DPS is reference to each Lot under it, unless the context otherwise indicates.

1.3 Northumberland County Council's role

Northumberland County Council ('**Council**') has established the DPS and is the lead contracting authority on relation to the DPS.

1.4 About each Lot

- Under each Lot, each Permitted Purchasing Body may enter into Call-Off Contracts with Member Operators from time to time.
- Each Lot is a standalone part of the DPS. Any activities the Council takes with one Lot (e.g. discontinuation) does not necessarily affect another Lot.

1.5 Purpose of these Rules

These Rules govern the conduct of the DPS.

<p>1.6 Operators to whom these Rules apply in relation to a particular Lot (each of them is a <b>'Member Operator'</b>)</p>	<p>These Rules apply to each operator</p> <ul style="list-style-type: none"> <li>• While it is an Applicant for at least one Lot (i.e. after it has submitted its Application but before it is accepted as a Member Operator); and</li> <li>• <b>If its Application is successful for at least one Lot:</b> while it remains a Member Operator on at least one Lot.</li> </ul>
<p>1.7 Legal nature of these Rules</p>	<p>By</p> <ul style="list-style-type: none"> <li>• Applying to be a member of any Lot of the DPS; and/or</li> <li>• Agreeing to take on a particular Call-Off Contract under this Dynamic Purchasing System</li> </ul> <p>a Member Operator 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 Operator shall remain bound to the Rules (as they stand from time to time) for as long as the Member Operator remains a member of any Lot.</p>
<p>1.8 How these Rules are to be amended from time to time Except as indicated elsewhere in these Rules</p>	<ul style="list-style-type: none"> <li>• As those amendments are published by the Council from time to time with the Council having given Member Operators at least <b>30 days</b> prior notice before the amendments come into effect.</li> <li>• No such amendment may create any specific obligations on an Applicant or a Member Operator (e.g. any obligation to do any particular act or any liability to pay any money) without its written agreement to those obligations.</li> </ul>
<p>1.9 Whether amendments to the Rules described in item 1.8 apply <b>retrospectively</b> to a Call-Off Contract already in place at the time</p>	<p>No, except to the extent the relevant Permitted Purchasing Body and the relevant Member Operator agree in writing.</p>
<p><b>2. Lots</b></p>	
<p>2.1 Current number of Lots</p>	<p>7</p>

2.2 Scope of services of each Lot

- Lot 1: Transport for Social Services Passengers including children excluded from mainstream schools
- Lot 2: Transport for children attending mainstream schools/further education Colleges
- Lot 3: Transport for children attending special schools/colleges
- Lot 4: Provision of local bus services
- Lot 5: Demand responsive services
- Lot 6 - NHS Transport, Northumbria and North Tyneside
- Lot 7: NHS Transport North Cumbria

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 having regard to the views of the other Permitted Purchasing Bodies.
- **If there is a decision to consolidate any existing Lots:** the Council must include Member Operators which are then members of the affected Lots in appropriate levels of engagement before making the decision.

**3. Permitted Purchasing Bodies**

3.1 The following contracting authorities are entitled to enter into Call-Off Contracts with Member Operators under each Lot of the DPS

Each of them is a **'Permitted Purchasing Body'**

This includes their respective successor bodies

(a) This local authority

Northumberland County Council

(b) Any of these NHS bodies

- Northumbria Healthcare Foundation Trust
- North Cumbria University Hospitals NHS Trust

(c) Companies

- Any company
- In which any of the Permitted Purchasing Bodies indicated in item (a) and/or in item (b) 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 Purchasing Body ('X') for the liabilities of another Permitted Purchasing Body ('Y') in respect of any Call-Off Contract entered into by Y but not by X	<ul style="list-style-type: none"> <li>• X shall not be liable for Y's liabilities arising under or in connection with that Call-Off Contract, including (without limitation), Y's liability to pay the relevant Charges.</li> <li>• <b>Exception:</b> 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).</li> </ul>
3.3 Whether 2 or more Permitted Purchasing Bodies may enter into one Call-Off Contract	They may do so, if they agree.
3.4 If 2 or more Permitted Purchasing Bodies are parties to the one Call-Off Contract	Their liabilities under the Call-Off Contract shall be joint and several unless otherwise clearly indicated in the Call-Off Contract.

#### 4. Duration

4.1 From when any Permitted Purchasing Body may first enter into a Call-Off Contract with a Member Operator under the DPS	Anytime on or after acceptance of Member Operators on to the relevant DPS.
4.2 Duration of the DPS	Original expectation of 10 years, but the Council may extend it further if it wishes to do so.
4.3 Consequence for the end of the DPS on any Call-Off Contract then in place	The end of the DPS does <b>not</b> in itself automatically result in the termination of that Call-Off Contract.

#### 5. Exclusivity

5.1 Whether any Permitted Purchasing Body is obliged to use any part of the DPS <b>exclusively</b>	No exclusivity obligation.
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#### 6. Guaranteed volumes

6.1 Whether any Permitted Purchasing Body guarantees any Member Operator <b>any minimum volume of business</b> under the DPS	No guaranteed minimum volumes.
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**7. Member Operator obligation to enter into Call-Off Contracts**

- 7.1 Whether any Member Operator is contractually obliged to accept
- Any particular Call-Off Contract; and/or
  - Any minimum volume of business offered by any Permitted Purchasing Body

No obligation on a Member Operator to do so.

**8. Number of Member Operators**

- 8.1 Whether there is to be any **maximum number of Member Operators** on a particular Lot at any time

- No maximum.
- Any Applicant shall be admitted as a Member Operator of each Lot for which it has submitted a satisfactory application, which the Council is to evaluate on a pass-fail basis.

- 8.2 Whether there is any preferred status or the like held by any Member Operator in relation to a particular Lot

No.

**9. Applying to become a Member Operator**

- 9.1 When Applicants may apply to become Member Operators of a particular Lot of the DPS

The DPS is expected to be open for new applications continuously while the Council continues to operate that Lot..

- 9.2 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 tendering system.

- 9.3 How the Council will evaluate an Applicant's application to become a Member Operator on a particular Lot

Entirely on a pass-fail basis according to criteria indicated in the application documents available at the time.

- 9.4 Whether there is any **minimum or maximum number of Lots** for which a prospective Member Operator may apply

No.

- 9.5 Whether an Applicant may apply to become a Member Operator **for different Lots at different times**

- The Applicant may do so according to procedures relevant to that Lot applicable at the time.
- The Council may waive any requirements in a later application if the Applicant has satisfactorily met those requirements in an earlier application for another Lot.

9.6 When decisions are communicated by the Council to Applicants on the outcome of their applications

- At times published by the Council.
- These times are to be regarded as estimates only.
- The Council may encounter delays outside its reasonable control in evaluating applications (e.g. staff illness, high volumes of applications).

9.7 If an Applicant's application is unsuccessful, whether the Applicant may reapply

It may do so at any time while the DPS is continuing.

## 10. Feedback

10.1 Feedback arrangements in relation to the application process

- The Council will provide feedback to a prospective Member Operators (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.

## 11. Changing application requirements

11.1 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 Operators of a particular Lot; and
  - For Member Operators to remain members of a particular Lotto reflect changes in standards, work practices etc. (e.g. new technology, new procedures, changes in the Law etc.).
- The Council encourages Member Operators 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 Operators.



11.2 How changes to minimum requirements are to be applied to **existing Member Operators** on a particular Lot

- Existing Member Operators 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.
- The Council may make further checks (e.g. ask further questions) of a Member Operator to ensure it has new requirements in place.
- If a Member Operator fails to meet the revised minimum requirements by the end of the notice period, the Member Operator will be removed from the relevant Lot. The Member Operator will not be eligible to be awarded future Call-Off Contracts under that Lot until the Member Operator is re-admitted.
- The Member Operator may re-apply to join the Lot when it wishes to do so. The Council will evaluate the Member Operator's re-application against the minimum requirements that apply at the time.

11.3 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 Operators on the relevant Lot.
- If an Applicant cannot meet the new minimum criteria, it will not be admitted to the Lot as a Member Operator.

## 12. Awarding Call-Off Contracts

12.1 A Permitted Purchaser may award a Call-Off Contract under the DPS as follows:

(a) Direct award

By direct award if the Permitted Purchasing Body is permitted to do so according to the following:

- Relevant Law, particularly the Public Contracts Regulations (2015); and
- The Permitted Purchasing Body's standing orders, contract procedure rules or anything similar.

(b) Otherwise

- By mini-competition or any other procedure that complies with relevant Law and the Permitted Purchasing Body's standing orders, contract procedure rules or anything similar.
- All Member Operators of the relevant Lot will be invited to take part, other than those suspended at the time according to section 21 of these Rules.
- The Permitted Purchaser will set the evaluation and award criteria at the time it conducts the mini-competition.

12.2 Right to request further information etc.

The relevant Permitted Purchasing Body may (acting reasonably) ask further questions and/or to seek further information or assurances from any Member Operator before awarding any Call-Off Contract to that Member Operator.

12.3 How **changes** to the procedures described in this section 12 are to be decided and made in relation to any Lot

The relevant Permitted Purchasing Body wishing to make those changes

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

## 13. Procedures to enter Call-Off Contracts

13.1 Procedures for a Permitted Purchaser **to enter into Call-Off Contracts** under the DPS

As decided and communicated by the relevant Permitted Purchasing Body (acting reasonably) at the time.

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

14.1 The terms and conditions of a particular Call-Off Contract comprise all of the following

- Unless otherwise agreed in writing between the Permitted Purchasing Body and the Member Operator
- As listed in order of priority if there are inconsistencies
- As amended according to section 15

(a) Call-Off specification	Any specification relevant to (and which accompanies) that Call-Off Contract.
(b) Award Letter	The rest of the Award Letter of that Call-Off Contract which is not otherwise described elsewhere in this list.
(c) General DPS Specification	The General DPS Specification relating to the DPS as a whole and/or to the relevant Lot, but only in relation to Call-Off Contracts where the Council and/or its Affiliates is the Permitted Purchaser.
(d) Schedules etc.	Any schedules, annexures or anything similar attached to the relevant Award Letter which are not described elsewhere in this list.
(e) Other documents	Other documents, websites identified by a link, or anything similar to any of these <ul style="list-style-type: none"> <li>• Which are cross-referenced in any document described elsewhere in this list; and</li> <li>• Which are clearly indicated to be incorporated into the relevant Call-Off Contract; and</li> <li>• Which are communicated (or in the case of a website, the relevant link has been communicated) between the parties.</li> </ul>
(f) Terms and conditions	The Call-Off Contract terms and conditions of the DPS as published at the time the Call-Off Contract is entered.
(g) Operator Call-Off Response	Any response, proposal or the like from the successful Operator Member in relation to the specific Call-Off Contract (e.g. its response to the relevant mini-competition) except to the extent the Permitted Purchasing Body at its discretion decides that this should override any other items in this list.
(h) Operator application	The Member Operator's application to become a member of the DPS, except to the extent the Permitted Purchasing Body at its discretion decides that this should override any other items in this list.

## 15. Contract amendments

15.1 How amendments are to be made to the terms and conditions of any Call-Off Contract (as described in item 14.1) after that 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 Operator.

15.2 How amendments are to be made to the following to apply to **new** Call-Off Contracts entered **after** the amendment is made

- To the General DPS Specification that applies to the relevant Lot; and/or
- To the call-off terms and conditions that apply to the relevant Lot

By the Council

- Having communicated the matter to each Member Operator.
- Having appropriately engaged the Member Operators generally.
- Having given Member Operators at least **28 days** prior notice before the amendments come into effect.

15.3 Whether amendments described in item 15.2 apply retrospectively to an existing Call-Off Contract

- No.
- Except to the extent the relevant Permitted Purchasing Body and the Member Operator agree (at their discretion) according to the requirements for amending contracts in the relevant call-off terms and conditions.

## 16. Charges

16.1 Charges payable by the Permitted Purchasing Bodies under each Call-Off Contract

As indicated in the relevant Call-Off Contract (e.g. the Award Letter or the Member Operator Response).

## 17. Social value

17.1 Social value obligations of the Member Operator while a member of the DPS

As indicated in the relevant Call-Off Contract.

## 18. Requirements to remain a Member Operator

18.1 Indicate any **Required Accreditations** which a Member Operator must meet at all times to remain a member of a particular Lot

Indicate the specific requirements if any for each Lot

- Those if any indicated in the General DPS Specification but only in relation to Call-Off Contracts of the Council and/or its Affiliates.
- Any others required by Law from time to time.
- A Permitted Purchasing Body may add further Required Accreditations for its own Call-Off Contracts.

18.2 Indicate any **minimum levels of insurance cover** which a Member Operator must have in place at all times to remain a member of a particular Lot

Indicate the specific requirements if any for each Lot

- £5 million motor vehicle cover.
- £5 million public liability cover.

18.3 Where the Member Operator is not required to have the insurance cover which is indicated in item 18.2

- 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).

## 19. Assignment of place as a Member Operator

19.1 Right of a Member Operator to assign its place **as a Member Operator** of a particular Lot

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

## 20. Keeping informed

20.1 Events or circumstances on which the Member Operator must keep the Council informed under this section 20

- In writing where reasonably practicable
- In a proper and timely manner when the Member Operator first becomes aware of the matter
- The Member Operator must keep 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 Operator, its subcontractors and/or any of their respective Personnel, regardless of whether or not in connection with a particular 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 any Permitted Purchasing Body due to its association with the Member Operator.

(b) Loss of Required Accreditation	The Member Operator 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 18.1.
(c) Insurance	<ul style="list-style-type: none"> <li>• The Member Operator not having in place all of the required insurance (to the minimum level) as indicated in item 18.2.</li> <li>• <b>Exception:</b> to the extent the Member Operator is exempt under item 18.3.</li> </ul>
(d) Any of the following if the Member Operator is a <b>human being acting as a sole trader</b>	
(i) Bankruptcy	<ul style="list-style-type: none"> <li>• The Member Operator's bankruptcy and/or</li> <li>• Any bankruptcy proceedings being commenced against the Member Operator.</li> </ul>
(ii) Charge, conviction	The Member Operator 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).
(iii) Right to remain	The Member Operator no longer having right to remain in the United Kingdom.
(e) Any of the following if the Member Operator is an <b>entity other than a human being (e.g. a company)</b>	
(i) Winding up	Any order of a court (or equivalent) being made or any resolution being passed requiring the Member Operator to be dissolved and/or wound up.
(ii) 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 Operator and/or its assets.
(iii) If the shares of the Member Operator are listed on a stock exchange	Any profit warnings in relation to the Member Operator which are issued to that stock exchange.
(iv) Change in control	<ul style="list-style-type: none"> <li>• Any change in the control of the Member Operator.</li> <li>• A person will be regarded as having 'control' over the Member Operator as indicated in item 27(a).</li> </ul>

(f) If the Member Operator is a consortium, partnership or the like, any of the following

(i) Change

Any change in the composition of its membership.

(ii) Events affecting members

Any of the events or circumstances indicated elsewhere in this section 20 in relation to the Member Operator applies to any of its members individually.

(a) Safeguarding investigations

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

(b) Corrupt Acts

Any breach by the Member Operator of section 26 relating to Corrupt Acts.

## 21. Suspension of a Member Operator

21.1 The Council may suspend a Member Operator from any Lot 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 Operator is remedying a Material Breach of any particular Call-Off Contract in place at the time.
- This applies regardless of
  - Which Permitted Purchasing Body is a party to the Call-Off Contract; and/or
  - Whether the Material Breach relates to a Call-Off Contract under that Lot and/or another Lot.

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

(i) Non-routine investigation

- The Member Operator and/or its Affiliate is subject to any significant, non-routine investigation by any regulatory or law enforcement agency (e.g. the police, any Permitted Purchasing Body exercising any function etc.),
- Whether or not the investigation relates to activities connected with any Call-Off Contract.

(ii) Risks

	<p>If the Council did not suspend the Member Operator from the Lot, there would be an unreasonable risk of <b>any</b> of the following:</p> <ul style="list-style-type: none"><li>• Serious harm to any individual.</li><li>• Serious adverse consequences for any person's property.</li><li>• Any Permitted Purchasing Body and/or its Affiliate breaching any genuine existing arm's length duty of care to another person.</li><li>• Serious, unjustified and unfavourable publicity to any Permitted Purchasing Body and/or its Affiliate.</li></ul>
21.2 How the Council exercises its rights to suspend the Member Operator from the relevant Lot	<ul style="list-style-type: none"><li>• By communicating the matter in writing to the representative of the Member Operator.</li><li>• The communication must indicate the reasons for the suspension.</li></ul>
21.3 For how long the Council is entitled to suspend the Member Operator from the relevant Lot	Only for as long as any of the circumstances in item 21.1 continue to apply.
21.4 Consequence of a Member Operator's suspension from the relevant Lot	<ul style="list-style-type: none"><li>• That Member Operator shall not be eligible to enter into any Call-Off Contract with a Permitted Purchasing Body during its suspension.</li><li>• Existing Call-Off Contracts remain unaffected by the suspension itself.</li></ul>
21.5 Whether suspension of the Member Operator limits any person's rights and remedies in relation to the circumstances described in item 21.1  E.g. the rights of any Permitted Purchasing Body to exercise any rights under its Call-Off Contracts such as termination rights, if any	No.



## 22. Announcements and publicity

22.1 Restrictions on the Member Operator doing any of the following:

- Making announcements and/or giving publicity in connection with its membership of any Lot and/or in connection with any services provided under any Call-Off Contract under the DPS (e.g. press releases, public circulars, interviews) and/or
- Using any reference to any Permitted Purchasing Body and/or its Affiliates (including use of its logos or other branding) in any publicity materials of the Member Operator and/or its Affiliate

- The Member Operator must not do so without the prior written consent of the relevant Permitted Purchasing Body. This consent must not be unreasonably withheld
- The Member Operator must not assist or instruct another person to do any act that would breach this section 22 if that act were done by the Member Operator directly.
- If the Member Operator's Affiliate does anything that would breach the obligations indicated in this section 22 if done by the Member Operator directly, the onus will lie with the Member Operator to prove it was not done with the Member Operator's instruction and/or assistance.

## 23. Voluntary withdrawal from a Lot

23.1 Whether a Member Operator may voluntarily withdraw its membership of

- Any particular Lot and/or
- The DPS as a whole

- The Member Operator may do so by communicating the matter to the Council.
- However, given the Member Operator is not obliged to accept any particular levels of business, the Member Operator is not obliged to communicate its wish to withdraw.

23.2 If a Member Operator voluntarily withdraws under item 23.1, whether it may be readmitted if it wishes

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

## 24. Removal from a Lot

24.1 Whether the Council may remove a Member Operator 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 25) applies to the Member Operator at the time.

24.2 How the Council exercises its rights to remove the Member Operator from the relevant Lot

- By communicating the matter in writing to the Member Operator through the Council's electronic portal.
- The communication must describe the relevant Removal Event to which the removal relates.

24.3 Effective date of the Member Operator's removal

On the date the Council communicates the matter to the Member Operator under item 24.2 or on such later date indicated in the communication.

24.4 Whether the Council may remove the Member Operator from a particular Lot under this section 24 if the Removal Event only applies to another Lot	The Council may do so but is not obliged to do so.
24.5 Consequences of the removal of a Member Operator from a particular Lot under this section 24 on any Call-Off Contracts it has in place in time	<ul style="list-style-type: none"> <li>• Removal shall not in itself affect those Call-Off Contracts.</li> <li>• This does not limit the rights of a Permitted Purchaser (e.g. any termination rights) under any such Call-Off Contract.</li> </ul>
24.6 Whether removal of the Member Operator under this section 24 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.
24.7 Right of the Member Operator and/or its Affiliate to apply for admission or readmission to the relevant Lot if the Member Operator has been removed under this section 24	<ul style="list-style-type: none"> <li>• The Member Operator and/or its Affiliate must undertake the normal application process that applies at the time.</li> <li>• The Council may charge a reasonable fee to cover its costs in evaluating such an application. The Council may at its discretion refund that fee if the application is successful.</li> <li>• The Council may (acting reasonably and proportionately) <ul style="list-style-type: none"> <li>- May seek additional assurances from the Member Operator or Affiliate; and/or</li> <li>- May take additional steps to satisfy itself</li> </ul> That the Member Operator or its Affiliate (whichever is the Applicant) has taken suitable steps to rectify the issue that was the cause of the removal. </li> </ul>

## 25. Member Operator Removal Events

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

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

### 25.1 Termination of Call-Off Contract

Termination of any Call-Off Contract which the Member Operator and/or its Affiliate holds at the time under any Lot where that termination is substantially due to any default event of the Member Operator and/or its Affiliate.

25.2 Insurance	<ul style="list-style-type: none"> <li>The Member Operator does not have in place the insurance cover required in item 18.2 at any time.</li> <li><b>Except</b> to the extent the Member Operator is exempt under item 18.3 at the time.</li> </ul>
25.3 Serious misconduct	<ul style="list-style-type: none"> <li>The Member Operator has engaged in serious misconduct</li> <li>Such misconduct includes without limitation <ul style="list-style-type: none"> <li>The Member Operator's involvement in a serious public scandal (whether or not in connection with the DPS and/or any Call-Off Contract); and</li> <li>Where a reasonable person would not expect any Permitted Purchasing Body to continue a commercial relationship of this kind with the Member Operator.</li> </ul> </li> </ul>
25.4 <b>Misconduct in application, award:</b> the Member Operator has engaged in serious misconduct	
<ul style="list-style-type: none"> <li>in relation to <ul style="list-style-type: none"> <li>Its application to become a Member Operator; and/or</li> <li>The award of any Call-Off Contract under the Call-Off Contract</li> </ul> </li> <li>Regardless of whether the misconduct occurred with the knowledge of the Member Operator's senior management</li> <li>Including the following without limitation</li> </ul>	
(a) Corrupt Act	Doing any act in connection with that competitive exercise that would breach section 26 in relation to Corrupt Acts.
(b) Canvassing	Engaging in any canvassing activity with officers and/or elected members of a Permitted Purchasing Body and/or its Affiliate.
(c) Collusion	Engaging in any collusive or other anti-competitive conduct with other actual or potential operators.
25.5 Corrupt Act	The Member Operator's breach of section 26 in other circumstances not described in item 25.4.

25.6 Loss of Required Accreditation

The Member Operator does not (for any reason) hold any Required Accreditation which it is required to hold under item 18.1 according to the following

- **If the Member Operator 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 Operator even if the Member Operator later acquires that Required Accreditation.
- **Otherwise:** this shall be a Removal Event only for as long as the Member Operator does not hold that Required Accreditation.

25.7 Change in control

Where all of the following apply:

- The Member Operator is a company with share capital.
- There is a change in the majority underlying control of the Member Operator.
- That change in control is not the result of the purchase of shares in the Member Operator 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 if the Council has raised genuine questions and/or requests for further information with the Member Operator about the change.

25.8 In relation to the Member Operator if he/she is a human being operating as a sole trader

(a) Bankruptcy

The Member Operator becomes bankrupt.

(b) Certain convictions

The Member Operator 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 Operator dies.

(d) Significant disability

The Member Operator suffers total and permanent disability.

(e) Mental Health Act (if the Member Operator is a human acting as a sole trader) if relevant	The Member Operator 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 Operator in his/her relevant jurisdiction.
25.9 Right to operate	The Member Operator is not permitted to operate in the UK.
25.10 Certain appointments (if the Member Operator is not a sole trader – e.g. a company)	The Member Operator 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 Operator and/or its assets.
25.11 Winding up (if the Member Operator is not a sole trader – e.g. a company)	<ul style="list-style-type: none"> <li>• The Member Operator is subject to a court order (or equivalent) or a resolution requiring the Member Operator to be dissolved and/or wound up.</li> <li>• <b>Exception:</b> in relation to a genuine solvent reconstruction where <ul style="list-style-type: none"> <li>- The replacement entity becomes a Member Operator itself in relation to the relevant Lot.</li> <li>- The replacement entity has the same underlying majority controlling ownership as the Member Operator.</li> </ul> </li> </ul>
25.12 Unable to pay debts	<ul style="list-style-type: none"> <li>• If and for as long as the Member Operator 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.</li> <li>• 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 Operator has no reasonable prospect of paying such debts.</li> </ul>
25.13 Composition with creditors	If and for as long as the Member Operator 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.

25.14 If the Member Operator 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 25 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 Operator 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.

## 26. Corrupt Acts

26.1 Obligations of the Member Operator in relation to Corrupt Acts

The Member Operator must not do any of the following in connection with its membership of any Lot of the DPS and/or in connection with any Call-Off Contract it has in place from time to time

- Carry out any Corrupt Act; and/or
- Assist or instruct another person to carry out any Corrupt Act.

26.2 Definition of a '**Corrupt Act**':

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 any Permitted Purchasing Body 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	<ul style="list-style-type: none"> <li>• Any act which breaches any policy of a Permitted Purchasing Body 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 Operator.</li> </ul>
(c)	Certain offences	<p>In relation to the Member Operator's dealings with a Permitted Purchasing Body and/or its Affiliate in connection with its membership of any Lot of the DPS and/or in connection with any 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	<p>Any serious attempt by any Personnel of the Member Operator and/or its Affiliate to do anything indicated elsewhere in this item 26.2.</p>

**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)	Applicant	<p>An operator after it has submitted an Application for any Lot of the DPS, but before the Council has communicated its decision to the operator.</p>
(a)	Application	<p>Any application which an operator makes to become a member of any Lot of the DPS from time to time.</p>

(b)	Award Letter	<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 Call-Off Contract (e.g. the service user's requirements, charges, etc.); and</li> <li>• Which cross references the DPS and/or a particular Lot of the DPS; and</li> <li>• Which is agreed by a particular Permitted Purchasing Body and a particular Member Operator.</li> </ul>
(c)	Call-Off Contract	<p>Each contract entered from time to time between any Permitted Purchasing Body and a Member Operator:</p> <ul style="list-style-type: none"> <li>• In connection with any Lot of the DPS.</li> <li>• According to the administrative procedures described in section 13 of these Rules.</li> </ul>
(d)	Charges	<p>Any charges which a Permitted Purchaser is liable to pay a Member Operator under a relevant Call-Off Contract.</p>
(e)	Dynamic Purchasing System or DPS	<p>The dynamic purchasing system described in section 1 of these Rules.</p>
(f)	General DPS Specification	<p>The specification published by the Council from at the relevant time a particular Call-Off Contract is entered which applies generally to all Lots of the DPS.</p>



(g)	Law	<p>Any of the following to the extent applicable to the Permitted Purchasing Body and/or to an Applicant and/or a Member Operator 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 this Dynamic 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 Dynamic Purchasing System from time to time.</li> </ul>
(h)	Lot	<ul style="list-style-type: none"> <li>• Each lot of the DPS described in section 2 of these Rules, and</li> <li>• Any additional, replacement or consolidated Lots of this Dynamic Purchasing System from time to time.</li> </ul>
(i)	Member Operator	<p>Any operator for as long as it remains a member of at least one Lot of the DPS from time to time.</p>
(j)	Permitted Purchasing Body	<p>Each organisation indicated in item 3.1.</p>
(k)	Removal Event	<p>Any event or circumstance described as such in relation to the Member Operator in section 25.</p>
(l)	Required Accreditation	<p>Each accreditation, licence, permit or the like which a Member Operator is required to hold according to item 18.1.</p>
(m)	Rules	<p>These rules relating to the DPS, as amended from time to time.</p>

## 28. Interpretation

Except to the extent the context otherwise requires (and except to the extent otherwise indicated elsewhere in these Rules), these Rules shall be interpreted as follows

28.1	Headings	Headings do not affect the interpretation of these Rules.
28.2	Reference to a party	<ul style="list-style-type: none"><li>• Reference to any party is a reference to a party to these Rules.</li><li>• It includes reference to that party's successors in title and permitted assignees.</li></ul>
28.3	Consents, approvals	<ul style="list-style-type: none"><li>• Where consent, approval, permission or anything similar to these of a person is not to be unreasonably refused, also cannot be unreasonably delayed or subject to unreasonable conditions.</li><li>• Where consent, approval, permission or anything similar to these is to be at that person's discretion, that person<ul style="list-style-type: none"><li>- Shall not be obliged to respond to a request for it; and</li><li>- Shall not be obliged to give reasons for its decision (including any decision not to respond); and</li><li>- 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).</li></ul></li></ul>
28.4	Definitions	If a word or phrase is defined in these Rules, its other grammatical forms have a corresponding meaning.
28.5	Statutes, codes etc.	Reference in these Rules to any statute, code or anything similar to these includes reference to any amending, replacing, modifying or consolidating statute, code or anything similar to these on substantially similar subject matter.
28.6	'In writing'	<ul style="list-style-type: none"><li>• Use of the expression 'in writing' (or a similar word) includes (but is not limited to) an e-mail or facsimile message or any other methods of representing words in a visible form.</li><li>• It does not include communication by telephone text messages or communication via a social media site (or anything similar to these).</li></ul>

28.7 'Including'

- Use of the word 'including', 'in particular', 'for example' (or a similar words or expressions) 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 to illustrate a particular concept does not limit that concept in any way.

28.8 Items etc.

Reference in this agreement to items, sections, schedules, appendices or annexures is reference to those in these Rules.

28.9 Other references

- 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.