

Dated 01 April 2026

Introduction

Fusion21 Limited is a wholly owned operating subsidiary of Fusion21 Foundation. It is an innovative social enterprise whose aim is to grow the impact of the social economy through collective procurement, by leveraging procurement investment made by the public sector and ensure social value is an integral part of every public contract. Fusion21 Limited, on behalf of Fusion21 Foundation, establishes and manages Commercial Tools which it makes available to the Members of the Members Consortium via its Procurement Services.

Fusion21 Foundation is a registered charity and company limited by guarantee which promotes the advancement of citizenship and community development for the benefit of the public by the promotion of urban and rural regeneration in areas of social and economic deprivation.

In accordance with charity law the Foundation is controlled by a board of trustees. More than half of the trustees are appointed by contracting authorities, and as a not-for-profit charity, the Foundation does not operate on a commercial basis. Therefore, in accordance with the definition in Section 2 of The Procurement Act 2023, the Foundation is a Contracting Authority for the purposes of the Act. Acting in accordance with its charitable objects, Fusion21 Foundation sets up Commercial Tools as a Centralised Procurement Authority.

The Members Consortium is a group of Public Bodies who are subject to the requirements of The Procurement Act 2023 and who may be subject to Public Procurement Legislation, that have collectively and individually agreed to utilise the Procurement Services of Fusion21 Limited (acting as agent on behalf of Fusion21 Foundation) and agreed to the terms set out herein.

Prior to the date of these terms the Fusion21 Members Consortium established Commercial Tools for and on behalf of its constituent parties. In accordance with the governing Terms of Membership on an ongoing basis Fusion21 Limited was appointed as the sole agent of Fusion21 Members Consortium to manage the performance of all agreements that were established.

1. Interpretations

The following definitions and rules of interpretations apply.

Access Only	means the process through which a call-off is completed by a Member (or its appointed agent(s)) without the use of the Procurement Services.
Advisory Board	means the sub-committee of Fusion21 Foundation formed of Members' representatives which has oversight of the regulated procurement activity being carried out by Fusion21 Limited on behalf of Fusion21 Foundation, and which shall represent the priorities of the wider Members Consortium.

Applicable Data Protection Laws	all Applicable Laws relating to the protection of personal data and the privacy of individuals, including the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426).
Applicable Procurement Legislation	means the law that applied at the time the procurement of the respective Commercial Tool was commenced. For those commenced prior to 24 February 2025 this is The Public Contracts Regulations 2015, for those commenced after this date it shall be The Procurement Act 2023.
Call-off Arrangements	means the process by which a Member enters into a call-off contract with a Supplier via a Commercial Tool.
Centralised Procurement Authority	has the meaning set out in section 1 of The Procurement Act 2023.
Commercial Tool	means the agreements established in accordance with the Applicable Procurement Legislation for the purpose of the future award of contracts and Public Contracts by either Fusion21 Members Consortium or Fusion21 Foundation. These may be framework agreements and dynamic purchase systems established in accordance with The Public Contracts Regulations 2015, or frameworks and dynamic market established in accordance with The Procurement Act 2023.
Confidential Information	means all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers to the other party and that party's representatives.
Contracting Authority	has the meaning set out in section 2 of The Procurement Act 2023.
FOIA	The Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
Fusion21 Members Consortium	means the unincorporated association of contracting authorities, acting jointly with the express purpose of undertaking centralised purchasing activities to establish Commercial Tools in accordance with The Public Contracts Regulations 2015.
Fusion21 Limited	the social enterprise established as the managing agent in respect of the administration of Commercial Tools set up by Fusion21 Foundation and the Fusion21 Members Consortium. Fusion21 Limited is a company limited by guarantee

incorporated and registered in England and Wales with company number 5090266 whose registered office is at Unit 2, Puma Court, Kings Business Park, Knowsley, L34 1PJ

Fusion21Foundation	the registered charity and parent of Fusion21 Limited. Fusion21 Foundation is a company limited by guarantee incorporated and registered in England and Wales with company number 07998339 whose registered office is at Unit 2, Puma Court, Kings Business Park, Knowsley, L34 1PJ. It is also a registered charity (charity number 1164818) and a Contracting Authority.
Intellectual Property Rights	means patents, copyright and related rights, trademarks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights to use and preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Member	means an entity that has agreed to Fusion21 Limited's terms of business in respect of utilising a framework or other commercial tool which has been established in accordance with The Procurement Act 2023.
Members Consortium	means the collective group of Public Bodies having entered into an agreement with Fusion21 Limited in substantially the same terms as this agreement, who are eligible for the benefits, over and above access to the Procurement Services, set out within this document.
Permissible User	Means the contracting authorities entitled to award contracts in accordance with the Commercial Tool.
Permitted Change	means a change to these terms of Membership which Fusion21 Limited or Fusion21 Foundation may make, without prior consultation, agreement or notice.
Procurement Services	means the provision of advice and assistance to Members in respect of the award of contract and Public Contracts from Commercial Tools.
Public Bodies	means a formally established organisation that is publicly funded to deliver a public or government service, though not as a ministerial department.

Public Contract(s)	has the meaning set out in section 3 of The Procurement Act 2023.
Public Procurement Legislation	means the wider legal framework in respect of Public Procurement, including but not limited to The Procurement Regulations 2024, the National Procurement Policy Statement and applicable Public Procurement Policy Notes.
Schedule of Procurement Services	means the document which sets out the roles, responsibilities and obligations of each party for each and all call-offs.
Services	means the general provision of advice and assistance to both Members and other bodies with matters relating to procurement, including but not limited to procurement in accordance with Applicable Procurement Legislation and Public Procurement Legislation.
Special Interest Group(s)	means a pan-framework group of interested parties from Suppliers, Members, Fusion21 Foundation and Fusion21 Limited and nominated third party organisations, formed with the intent to focus on a specific topic, area of knowledge, or practice within the built environment.
Supplier	means the legal entities that are party to the individual agreements for each Commercial Tool , and as identified within the applicable transparency notices as required by the Applicable Procurement Legislation.
Relevant Legislation	means any legislation, other than the Applicable Procurement Legislation and Public Procurement Legislation, to which either the Member or subject matter of a contract may be subject.

2. Membership

- 2.1 You shall warrant that you are, and will remain for your period of membership, a Contracting Authority.
- 2.2 Unless otherwise expressly stated within a respective Tender or Contract Award Notice, acceptance of these terms and in continuing to meet the requirements clause 2.1 you shall be deemed to be a Permissible User of the Commercial Tools.
- 2.3 On an ongoing basis, for the term of this agreement, you agree in whole or part to utilise the Procurement Services of Fusion21 Limited.
- 2.4 On an ongoing basis, for the term of this agreement, you may with the express permission of Fusion21 Limited for each occurrence, utilise the commercial tools on an Access Only arrangement.
- 2.5 You recognise that Fusion21 Foundation is a Contracting Authority and Centralised Procurement Authority and that it has established Commercial Tools in accordance with The Procurement Act 2023 and any applicable Public Procurement Legislation.

- 2.6 The Fusion21 Members Consortium was created 13 February 2015. You recognise that under its terms of membership that the Fusion21 Members Consortium is a Contracting Authority that established Commercial Tools in accordance with The Public Contracts Regulations 2015 and applicable Public Procurement Legislation, and in doing so you shall be entitled to access such Commercial Tools.
- 2.7 You acknowledge the relationship between Fusion21 Foundation and Fusion21 Limited as its managing agent, and similarly the previous arrangement between Fusion21 Limited and Fusion21 Members Consortium.
- 2.8 You acknowledge the legitimate interests of Fusion21 Limited in the management of Commercial Tools established by or on behalf of Fusion21 Foundation and previously of Fusion21 Members Consortium.
- 2.9 You acknowledge that this agreement places no restriction on Fusion21 Foundation or Fusion21 Limited in respect of the entities to which they deliver their Services.
- 2.10 You agree to adhere to the Call-off Arrangements specified in any Commercial Tool.
- 2.11 In consideration of membership, a Member shall be entitled to
 - 2.11.1 access the Procurement Services of Fusion21 Limited, as set out in clause 3 of these terms.
 - 2.11.2 award both contracts and Public Contracts via any Commercial Tool.
 - 2.11.3 receive information and/or reports on the operation and performance of the Members Consortium and Procurement Services.
 - 2.11.4 engage in any consultation processes regarding the development of any commercial tool or the Procurement Services, accepting that the discretion for decisions on such matters shall rest with Fusion21 Limited in its capacity as the agent of Fusion21 Foundation.
 - 2.11.5 engage and participate in any Special Interest Groups.
 - 2.11.6 subject to their being a vacancy you may nominate a representative to the Advisory Board.
 - 2.11.7 nominate a representative for any committees which may be established for the Members Consortium.
 - 2.11.8 subject to a vacancy you may appoint (where it is agreed between the parties) a director to the Board of Fusion21 Foundation, so that the majority of its directors shall always be appointed by Contracting Authorities.
 - 2.11.9 access such other benefits and services as Fusion21 Foundation and/or Fusion21 Limited may offer in the future.

3. The Procurement Services

- 3.1 Fusion21 Limited shall generally make the Procurement Services available to all Members.
- 3.2 These services shall be used in connection with the award of both Public Contracts and contracts which are subject to the procurement requirements of the Member and/or any Relevant Legislation.

- 3.3 Fusion21 Limited may withhold the Procurement Services where it reasonably believes that a call off either has been, or will be, completed in a manner which does not adhere to the Call-off Arrangements or terms set out in the respective Commercial Tool agreement.
- 3.4 The Procurement Services shall be delivered in a manner set out in the Schedule of Procurement Services.
- 3.5 Fusion21 Limited may update the Schedule of Procurement Services from time to time, notifying Members in advance of any changes taking effect. Changes may only be applied to future call-offs, and the Member may exercise their right to terminate this agreement (in respect of that Member only) should they choose.
- 3.6 In circumstances where the required services differ from those set out in the Schedule of Procurement Services any variations shall be confirmed in writing by Fusion21 Limited.
- 3.7 At all times Fusion21 Limited shall use reasonable endeavours to ensure that any advice given within the delivery of the Procurement Services complies with the Applicable Procurement Legislation and any applicable Public Procurement Legislation.
- 3.8 Unless otherwise agreed in writing, in the delivery of the Procurement Services Fusion21 Limited shall accept no liability for compliance with any Relevant Legislation, this shall be responsibility of the Member.
- 3.9 Neither Fusion21 Foundation nor Fusion21 Limited provide legal advice. Members must seek their own legal advice regarding any Call-off Arrangement, any draft or final agreement, and any advice provided by Fusion21 Foundation or Fusion21 Limited to the Member whether that advice may be considered Procurement Services, Services, or otherwise.

4. **Access Only**

- 4.1 Fusion21 Limited shall generally make available the ability for Members to use the Commercial Tools on an Access Only basis for the award of Public Contracts and contracts which are subject to the procurement requirements of the Member and/or any Relevant Legislation.
- 4.2 In all instances the Member shall notify Fusion21 Limited of their intention to award a call-off from a Commercial Tool.
- 4.3 Fusion21 Limited shall freely make available such information so that the Member may complete any such award in accordance with the respective terms of the Commercial Tool, the Applicable Procurement Legislation and any applicable Public Procurement Legislation.
- 4.4 Following any such award and immediately after the execution of a contractual terms with the Supplier, the Member will freely provide such information on the Public Contract or contract to enable Fusion21 Limited to complete their obligations under this agreement, specifically, but not limited to clause 6.3, 6.4 and 8.

5. Call-Offs

- 5.1 Each Member acknowledges that any contract from a Supplier pursuant to a Commercial Tool will be made in accordance with the Call-off Arrangements and that such contract is made directly between the Member and the nominated Supplier.
- 5.2 Each Member acknowledges that it shall duly notify Fusion21 Limited in a timely manner of any contract awarded via a Commercial Tool.
- 5.3 Each Member acknowledges and agrees that where a contract has been awarded via a Commercial Tool, irrespective of the Procurement Services, the Payments and Charges set out in clause 7 will apply.
- 5.4 It is accepted that Fusion21 Foundation or Fusion21 Limited may request reasonable information on both the process of award and the contract, such that they can complete their obligations and responsibilities as set out within the respective Commercial Tool agreement.

6. Warranties and Representations of Fusion21 Foundation and Fusion21 Limited

Fusion21 Foundation (acting directly or via Fusion21 Limited as its managing agent) warrants that it shall be responsible for:

- 6.1 Establishing Commercial Tools for the benefit of the Members and other Public Bodies
- 6.2 Ensuring that procurement activity for the purpose of establishing Commercial Tools and the delivery of services is completed in accordance with the Applicable Procurement Legislation and any other applicable Public Procurement Legislation.
- 6.3 Managing Commercial Tools following their award, ensuring that Suppliers continue to meet the conditions of participation and that they are not an excluded supplier.
- 6.4 Using all reasonable endeavours to achieve the individual objectives and benefits set out within each Commercial Tool agreement and in contributing to the overall purpose of Fusion21.
- 6.5 Providing all funding and resourcing to undertake all activity in respect of procurement activity to establish Commercial Tools and in the delivery of the Procurement Services.
- 6.6 Undertaking the following activities to the benefit of the Members:
 - 6.6.1 consulting with the Members Consortium on a regular basis regarding their procurement needs.
 - 6.6.2 where practical, establishing and inviting Members to participate in Special Interest Groups.
 - 6.6.3 reporting on the operation and performance of the Members Consortium and Procurement Services on a frequency no greater than every 12 months.

7. Liability

Nothing in this agreement limits any liability which cannot legally be limited. Subject to this:

- 7.1 The liability of Fusion21 Foundation and/or Fusion21 Limited in respect of establishing Commercial Tools and the provision of the Procurement Services and Services, whether

arising in contract, tort (including negligence) or otherwise, in respect of any one act and omission shall not exceed £2,000,000.

7.2 Where the Member has utilised the Procurement Services:

7.2.1 no party shall be liable under or in connection with this agreement in contract, tort (including negligence) or otherwise for loss of profit or indirect or consequential loss; and

7.2.2 all conditions, warranties, representations or other terms that might otherwise be implied into this agreement by statute, common law or otherwise are excluded from this agreement.

7.3 Where the Member has used the Commercial Tools on an Access Only basis:

7.3.1 The Member shall indemnify Fusion21 against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Fusion21 arising out of or in connection with the Call Off.

8. Payments and Charges

8.1. The parties agree and acknowledge that membership of the Members Consortium is free of charge, and that there are no fees or joining costs.

8.2. The parties acknowledge that where a contract is entered into following a call-off, either via the Procurement Services or on an Access Only basis, Fusion21 Limited shall charge Suppliers in accordance with the terms of any agreement between the Suppliers, Fusion21 Foundation and Fusion21 Limited, and where applicable in accordance with the details set out in the tender notice for the Commercial Tool.

8.3. The parties acknowledge that each Supplier shall be responsible for making all reasonable allowances for the payment of fees and charges due to Fusion21 Limited as set out within any agreement between the Supplier, Fusion21 Foundation and Fusion21 Limited.

8.4. It is agreed that where a Supplier unreasonably withholds or disputes the validity of such fees or charges, that the contract may be deemed to have been procured through other means and not via the Procurement Services. In such circumstances Fusion21 Limited cannot warrant that the ongoing performance of the contract complies with any and all legislative requirements.

9. Term and Termination

9.1 A Member shall remain as a Member until such time as its membership is terminated by the Member or Fusion21 Foundation or Fusion21 Limited.

9.2 A Member may terminate their membership of the Members Consortium and this agreement at any time by serving one (1) months' notice on Fusion21 Foundation or Fusion21 Limited.

9.3 The termination or expiry of this membership for any reason shall not prejudice the rights of Members under extant call-off contracts made pursuant to a Commercial Tool.

Each such call-off contract in force at the date of termination or expiry of membership shall continue in full force and effect for the remainder of the term of such call-off contract, unless earlier terminated in accordance with the terms of such call-off contract.

- 9.4 Fusion21 Foundation or Fusion21 Limited may at any time terminate this agreement with immediate effect by giving notice to the Member if:
- 9.4.1 the Member commits a breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 5 days after being notified to do so; or
 - 9.4.2 the Member repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or
 - 9.4.3 Fusion21 Foundation or Fusion21 Limited reasonably believes that the Member is not acting in the best interests of the Members Consortium.
- 9.5 The provisions of clause 9 shall survive the termination or expiry of this agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

10. Confidentiality

- 10.1 Each party undertakes that they shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, clients, or suppliers of the other party or of any Member of the Members Consortium, except as permitted by clause 9.2.
- 10.2 Each party may disclose the other parties' Confidential Information:
- 10.2.1 to its employees, officers, representatives, or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives, or advisers to whom it discloses the other party's confidential information comply with this clause; and
 - 10.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 10.3 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under this agreement.
- 10.4 In the event that either party is required to disclose Confidential Information to a third party by law or by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction it shall, to the extent that it is legally permitted to do so, give the other as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause, take into account the reasonable requests of the other in relation to the content of such disclosure.

11. Intellectual Property

- 11.1 Each Member acknowledges that all Intellectual Property Rights in the Commercial Tools created solely by Fusion21 Foundation and/or Fusion21 Limited and any materials relating to them created solely by Fusion21 Foundation and/or Fusion21 Limited (including, without limitation all tender Notices, pre-qualification questionnaires, invitations to tender, tenders scoring created solely by Fusion21 **Foundation** and/or Fusion21 Limited) ("Fusion21 Materials"), shall automatically belong to Fusion21 Foundation and/or Fusion21 Limited (as appropriate) to the fullest extent permitted by law. To the extent that they do not vest in Fusion21 Foundation and/or Fusion21 Limited automatically, the Member holds them on trust for Fusion21 Foundation and/or Fusion21 Limited . Fusion21 Foundation and/or Fusion21 Limited (as relevant) hereby grants to each Member an irrevocable, royalty-free, world-wide licence to use the Fusion21 Materials in connection with the Commercial Tools and related Call-off Arrangements.

12. Data Protection

- 12.1. Each party shall comply with its respective obligations under Applicable Data Protection Laws and any associated legislation that arises in connection with this agreement. This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 12.2. The parties shall not provide 'personal data' as defined in the regulations to the other parties other than is necessary to fulfil their respective obligations under this agreement.
- 12.3. Each party in administering or fulfilling its obligations under this agreement shall take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 12.4. Each party shall notify the other without undue delay on becoming aware of a personal data breach;
- 12.5. Fusion21 Ltd and Fusion21 Foundation shall process personal data in accordance with its privacy policy, as updated from time to time. This privacy policy (at the date of these terms and conditions) can be found at [Fusion21 Privacy Policy.pdf](#)

13. Freedom of Information

- 13.1. The parties acknowledges that each other are subject to the requirements of the FOIA and the Environmental Information Regulations, and that both parties shall:
- 13.1.1. provide all necessary assistance and cooperation as reasonably requested to enable the other to comply with its obligations under the FOIA and Environmental Information Regulations;
- 13.1.2. transfer to the other all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 3 Working Days of receipt;
- 13.1.3. provide the other with a copy of all Information belonging to the party, as requested in the Request For Information which is in its possession or control

in the form that the other requires within 7 Working Days (or such other period as may reasonably be specified) of the request for such Information; and

- 13.1.4. not respond directly to a Request for Information unless authorised in writing to do so by the other.
- 13.2. The parties acknowledges that they may be required under the FOIA and Environmental Information Regulations to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent. The parties shall take reasonable steps to notify each other of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the parties shall be responsible for determining in their absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations.

14. No Partnership or Agency

- 14.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party except as expressly provided in clause 2.

15. Changes

- 15.1. Fusion21 Limited and Fusion21 Foundation shall be entitled to make the following Permitted Changes:
 - 15.1.1. Where required to do so by:
 - a) Applicable law
 - b) Regulations
 - c) Codes of practice
 - d) a regulator, or
 - e) a court of competent jurisdiction
 - 15.1.2. So long as to maintain the general level of activity, alterations may be made to the Schedule of Procurement Services.
 - 15.1.3. Modifications to the respective terms of Commercial Tools including but not limited to the fees and charges set out in clause 8.2.
- 15.2. Fusion21 Limited reserves the right to make changes to these terms of membership. Fusion21 Limited will make reasonable endeavours to consult Members on proposed changes. A change notice will be issued to all Members including a summary of the changes, an effective date (being no less than 30 days from the change notice), and a copy of the new terms of membership. The terms of this agreement are deemed to change on the effective date of the change notice in accordance with the terms provided in the change notice. To ensure all Members are on equal footing, failure to receive a notice by an individual Member does not invalidate the change so long as a majority of Members have received the change notice. Notices for this purpose may be

issued electronically via email. A Member that does not agree to a change of term of membership may notify Fusion21 Limited at any time before the change comes into effect and its Membership will terminate contemporaneously with the change coming into effect, or anytime afterwards in line with clause 9.2.

16. Entire Agreement

- 16.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements, and understandings between them, whether written or oral, relating to its subject matter.
- 16.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this agreement. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this agreement.

17. Third Party Rights

- 17.1 No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

18. Governing Law and Jurisdiction

- 18.1 Fusion21 Foundation confirms that it, and its subsidiaries, will comply with all applicable law, statutes, and regulations in force from time to time including the Bribery Act 2010 and The Modern Slavery Act 2015.
- 18.2 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 18.3 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).