



FUSION21 LTD: TERMS OF MEMBERSHIP

INTRODUCTION

Fusion21 Members Consortium is a purchasing consortium that is available to members which is open to all public bodies including registered providers, ALMOs, LSTVs and Local Authorities, Education Establishments; Government Departments and their Agencies; Non-Departmental Public Bodies and NHS Trusts and as more specifically described within each Framework Agreement. The Members Consortium and the individual members of the Consortium are Contracting Authorities for the purposes of EU Procurement Directives and Regulation 3 of the Public Contracts Regulations 2006 and the Public Contracts Regulations 2015. Fusion21 is a company limited by guarantee that acts on behalf of the Members Consortium.

Fusion21 is an innovative social enterprise whose aim is to grow the impact of the social economy through collective procurement. We intend to do this by continuing to leverage procurement investment made by the public sector and ensure social value is delivered across the country. Fusion21 creates and manages on behalf of the members, award winning frameworks that the members can access for a range of 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.

1. INTERPRETATION

The following definitions and rules of interpretation apply.

1.1 Definitions:

Advisory Board: the board of Members' representatives as detailed in clause 3.1 which governs the Member's Consortium, consults with the wider membership and advises Fusion21 Ltd on (i) the procurement priorities and

service requirements of the Consortium (ii) the performance of Fusion21 Ltd's obligations under this agreement; (iii) the performance of any Services; (iv) advising Fusion21 Foundation on social and charitable use of any surplus generated by Fusion21 Ltd and (v) meeting the needs of the Consortium generally.

Call Off Arrangements: the means by which a Member enters into a call-off contract with a nominated Supplier under any Framework Agreements.

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, concerning any information that would be regarded as confidential by a reasonable business person relating to:

(i) the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party; and

(ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party.

Contracting Authority: has the meaning given in the Regulations.

Fusion21 Members Consortium or Consortium: the unincorporated purchasing consortium comprising the Members which is open to all public bodies including (without limiting the generality of the foregoing) registered providers, ALMOs, LSTVs, Local Authorities, Education Establishments; Government Departments and their Agencies; Non-Departmental Public Bodies and NHS Trusts.

Fusion21 Ltd ("Fusion21"): The social enterprise established as the Managing Agent for 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

Fusion21 Foundation: the charity of Fusion21 Ltd. Fusion21 Foundation Limited 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.

Framework Agreement: has the meaning given in the Regulations.

Intellectual Property Rights: patents, copyright and related rights, trade marks, 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.

Managing Agent: Fusion21 Ltd.

Member: an entity that has membership of the Consortium pursuant to entering into an agreement in substantially the same terms as this agreement.

Regulations: the Public Contracts Regulations 2006 (SI 2006/5) or Public Contracts Regulations 2015 (SI 2015/102) (as applicable).

Services: the consultancy and framework establishment, management and procurement services from time to time offered by Fusion21.



Supplier: suppliers who are parties to Framework Agreements.

2. MEMBERSHIP

2.1 In consideration of agreeing to become a Member of the Consortium you hereby:

- (a) give Fusion21 authority to establish Framework Agreements in accordance with the Regulations.
- (b) agree that Fusion21 shall be responsible for those matters listed in clause 3.2.
- (c) agree to supply Fusion21 with such information that you are reasonably able to supply (and subject to any obligations of confidentiality), that relate to the Fusion21 Framework Agreements, for the proper performance of any Services it may supply and the assessment of Supplier performance including (but not limited to):
 - (i) expenditure with existing Suppliers;
 - (ii) prices paid to existing Suppliers;
 - (iii) specifications of goods and /or services;
 - (iv) quantities of goods and/or services purchased from existing Suppliers.
- (d) agree to keep the terms of offers made by nominated Suppliers confidential and not disclose the same to any third party.
- (e) agree to adhere to the Call Off Arrangements specified in any Framework Agreement.

3. BENEFITS OF MEMBERSHIP

3.1 For so long as they remain a Member of the Consortium, a Member shall be entitled to:

- (a) receive Fusion21's reports on the operation and performance of the Consortium;

- (b) attend any meetings of the Consortium which may be held;
- (c) nominate a representative to the Advisory Committee and any other committees which may be established for the Consortium;
- (d) engage in any consultation processes regarding the development of the Consortium;
- (e) receive details of any offers from Suppliers;
- (f) receive information regarding Supplier performance;
- (g) receive assistance in resolving any disputes with Suppliers that may arise from time to time;
- (h) access such other benefits and services as Fusion21 may offer in future.

ORGANISATION

3.2 Fusion21 Ltd shall be responsible for:

- (a) establishing and monitoring governance and regulatory arrangements for the Consortium;
- (b) advertising OJEU notices for the establishment of Framework Agreements on behalf of and for the benefit of the Consortium and other public bodies;
- (c) managing existing Framework Agreements and establishing new Framework Agreements with Suppliers;
- (d) establishing such policies as may from time to time be required;
- (e) establishing such committees as may from time to time be required for the efficient operation of the Consortium for the benefit of the Members;
- (f) ensuring compliance with the Regulations;

- (g) funding and resourcing of all activities relating to the above.

4. PUBLIC PROCUREMENT

4.1 Fusion21 will

- (a) establish Framework Agreements in accordance with the Regulations for the benefit of the Consortium (and other public bodies);
- (b) advise and assist Members on public procurement generally;
- (c) consult with the Consortium on a regular basis regarding their procurement needs;
- (d) advise Members of any offers from Suppliers;
- (e) monitor the performance of Suppliers and relay such information to Members;
- (f) on request assist Members in resolving any disputes which may arise with Suppliers;
- (g) report to the Consortium on Fusion21's procurement activities on a[n] [annual/quarterly/monthly] basis;
- (h) provide funds and resources to support all activities relating to the above.

4.2 Fusion21 warrants that the Framework Agreements that it has established have been established in compliance with the Regulations.

5. CALL OFFS

5.1 The Member acknowledges that:

- (a) any contract for the purchase of goods and/or services from a Supplier pursuant to a Fusion21 Framework Agreement will be made in accordance with the Call Off Arrangements and that such contract is made directly between the Member and the nominated Supplier.



6. TERM AND TERMINATION

- 6.1 A Member shall remain as a Member until such time as its membership is terminated by either party.
- 6.2 A Member may terminate their membership of the Consortium and this agreement at any time by serving one (1) month's notice on Fusion21.
- 6.3 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 Fusion21 Framework Agreement. 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.
- 6.4 Fusion21 may at any time terminate this agreement with immediate effect by giving notice to the Member if:
 - (a) 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
 - (b) 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
 - (c) Fusion21 reasonably believes that the Member is not acting in the best interests of the Consortium.
- 6.5 The provisions of clause 7 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.

7. CONFIDENTIALITY

- 7.1 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 Consortium, except as permitted by clause 7.2.
- 7.2 Each party may disclose the other party's Confidential Information, and the information referred to at clause 2.1(e):
 - (a) 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
 - (b) as may be required by law, court order or any governmental or regulatory authority.
- 7.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.
- 7.4 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.

8. INTELLECTUAL PROPERTY

- 8.1 The Member acknowledges that all Intellectual Property Rights in the Fusion21 Framework Agreements created solely by Fusion21 and any materials relating to them created solely by Fusion21 (including, without limitation all OJEU Notices, pre-qualification questionnaires, invitations to tender, tenders scoring created solely by Fusion 21) ("**Fusion21 Materials**"), shall automatically belong to Fusion21 to the fullest extent permitted by law. To the extent that they do not vest in Fusion21 automatically, the Member holds them on trust for Fusion21. Fusion21 hereby grants to the Member an irrevocable, royalty-free, world-wide licence to use the Fusion21 Materials in connection with the Framework Agreements and related Call Off Arrangements.
- 9. **NO PARTNERSHIP OR AGENCY**
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.
- 10. **ENTIRE AGREEMENT**
 - 10.1 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.
 - 10.2 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.



- 11. THIRD PARTY RIGHTS**
- 11.1 No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

- 12. PAYMENTS**
- 12.1 The parties agree and acknowledge that membership of the Consortium is free of charge, and that there are no fees or joining costs.

- 13. CALL-OFFS**
- 13.1 The parties agree and acknowledge that no guarantee or representation has been, or shall be deemed to have been made, by the Member in respect of the total quantity or value of the goods, services and/or works that the Member may order pursuant to any Fusion21 Framework Agreement.

- 14. GOVERNING LAW AND JURISDICTION**
- 14.1 Fusion21 confirms that it 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
- 14.2 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.
- 14.3 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).