

DATED

2018

**NOTTINGHAMSHIRE COUNTY COUNCIL
on behalf of the EM LawShare Consortium**

AND

[Name of Legal Firm]

**FRAMEWORK AGREEMENT FOR THE
PROVISION OF LEGAL SERVICES
2018 – 2022**



Nottinghamshire County Council
Legal Services
Ref: 035788

THIS AGREEMENT is made on the

day of

2018

BETWEEN:-

1. **NOTTINGHAMSHIRE COUNTY COUNCIL, on behalf of the EM LAWSHARE CONSORTIUM**, whose administrative headquarters are at County Hall, West Bridgford, Nottingham, NG2 7QP (“the Authority”); and
2. **[NAME OF LEGAL FIRM]** of **[address]** (“the Service Provider”)

Background

- (1) This Agreement is a Framework Agreement setting out the terms on which the Consortium Members may purchase and the Service Provider will supply to the Consortium Members the Services and the Added Value Services as agreed from time to time by the parties.
- (2) The Consortium Members wish to have performed the Services as defined in this Agreement.
- (3) The Service Provider is willing to perform the Services in accordance with the terms and conditions of this Agreement.
- (4) By way of a process of competitive tender, the Consortium has selected the Service Provider to provide the Services to the Consortium from time to time as required.

Operative Provisions

1. Definitions

In this Agreement (including the Background set out above) the following expressions shall have the following meanings unless inconsistent with the context:-

Expressions	Meaning
Agreement	this agreement and the schedules;
Added Value Services	The services detailed in Specification that the Legal Partners must individually or collectively deliver to the Consortium Members & the Consortium Co-ordinator
Bribery Act	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time, together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
Commencement Date	1st April 2018;
Completion Pro-Forma	the pro-forma to be completed by the Service Provider in accordance with the Specification and as set out in Schedule 6;
Confidential Information	all information which is obtained or received by the Service Provider or any of its Service Provider Personnel or any Service Provider Party whether before or after the date of this Agreement, either in writing, as electronic data, orally or in any other form;
Consortium	the EM LawShare consortium of public bodies who are listed at Schedule 1, and any other public bodies who may join the consortium during the lifetime of this Agreement;
Consortium Co-ordinator	the person appointed by the Consortium Management Panel to act as co-ordinator for the Consortium and this Agreement pursuant to Clause 19;

Consortium Management Panel	a panel of members of the Consortium who administer and manage matters on behalf of the Consortium (membership of which may be amended from time to time);
Consortium Member	any of the public bodies who are members of the EM LawShare Consortium (including the Authority);
Contract	a contract for Services arising by virtue of Clause 4 which forms a direct contractual relationship between the individual Consortium Member and the Service Provider;
Data Processor	shall have the same meaning as set out in the Data Protection Act 1998;
Data Protection Legislation	the Data Protection Act 1998, any Data Protection Act in force that replaces the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the General Data Protection Regulation (EU) 2016/679 (which applies on and after 25 May 2018), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
Data Subject	shall have the same meaning as set out in the Data Protection Act 1998.
Day	a day which is not a Saturday or Sunday or a bank holiday or other public holiday in England save that where "day" is used in this Agreement it shall mean a calendar day;
Expiry Date	31 March 2022;
Feedback Assessment Form	the form to be sent out by the Service Provider to the Consortium Member at the conclusion of a case as set out at Schedule 7;
Fee Earner's Supervisor	the supervisor named on the Instruction Pro-Forma;
Fees	the Service Providers' costs and charges reasonably and properly incurred in performing the Services calculated in accordance with the set hourly rates or other agreed pricing module as specified in Schedule 4, and "Fee" shall be construed accordingly;
FOI Legislation	the Freedom of Information Act 2000, all regulations made under it and the Environment Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department of Constitutional Affairs or the Department for Environment Food and Rural Affairs in relation to such legislation;
Force Majeure	in relation to any Party, any unforeseeable or uncontrollable event or course of events, but excluding any strikes, go slow or other industrial action;
Information	information recorded in any form held by the Service Provider on behalf of any Consortium Member;

Information Request	a request for information under the FOI Legislation;
Instructions	requests for Services made by Legal Officers on behalf of their clients;
Instruction Pro-Forma	the pro-forma to be completed by the Service Provider in accordance with the Specification and as set out in Schedule 5;
Intellectual Property Rights	any and all patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how (whether or not the same constitutes Confidential Information), and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any part of the world;
Key Personnel	those persons named in Schedule 8;
Legal Officers	those identified employees of each Consortium Member as notified to the Consortium Co-ordinator and the Service Provider (as may be varied from time to time upon written notification);
Legal Partners	means the Service Provider and the other legal firms appointed by the Consortium under framework agreements to provide Services;
Management Fee	a charge of up to 0.5% of the Service Provider's invoiced income to Consortium Members each Year (net of VAT and disbursements);
Method Statements	The Service Provider's answers to the method statement questions asked during the tender process as contained in part 2 of Schedule 2;
Month	means a calendar month and "Monthly" shall be construed accordingly;
Ordering Procedures	means the ordering and award procedures specified in Clause 4 and Schedule 3;
Performance Report	The annual performance self-assessment report to be prepared by the Service Provider in accordance with the Specification;
Personal Data	shall have the same meaning as set out in the Data Protection Act 1998;
Prohibited Act	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function of activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (c) committing any offence:

	<ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority; or (iv) defrauding, attempting to defraud or conspiring to defraud the Authority;
Review Meetings	the meetings to monitor and review this Agreement held in accordance with Clause 16 and Schedule 10;
Services	the legal advice and associated services in relation to the Work Areas and more particularly detailed in the Specification to be performed by the Service Provider in accordance with the terms of this Agreement;
Service Provider Key Contact	the person appointed for the Service Provider in accordance with Clause 19
Service Provider Party	the Service Provider's agents and contractors, including each Sub-Contractor;
Service Provider Personnel	all employees, consultants and contractors of the Service Provider or of any Sub-Contractor;
Specification	the manner in which the Service Provider shall provide the Services as set out in part 1 of Schedule 2;
Statement of Requirements	a statement issued in accordance with the Ordering Procedures by a Consortium Member setting out the Services it requires;
Sub-Contract	any contract or agreement, or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services;
Sub-Contractor	the third parties that enter into a Sub-Contract with the Service Provider;
Supervisory Authority	shall mean the Information Commissioner or (as appropriate) such other governmental or regulatory body which is established pursuant to the Data Protection Legislation;
Work Area	The ten work areas specified in paragraph 1 of the Specification; and
Year	1 st April to 31 st March.

2. Interpretation

- 2.1 Reference to any gender includes any other gender and the singular includes the plural and vice versa.
- 2.2 The headings to the Clauses and parts of this Agreement and to the Paragraphs of the Schedules are for ease of reference only and shall not affect the construction of this Agreement.

- 2.3 References to any statute or statutory instrument will, unless the context otherwise requires, be construed as including references to that statute or statutory instrument as from time to time amended or to any statute or statutory instrument for the time being replacing, extending, consolidating or amending the same and will include any orders, regulations, instruments or other subordinate legislation made under relevant statute or statutory instrument.
- 2.4 References to "Clauses" and "Schedules" are to clauses of and schedules to this Agreement, and references to "Paragraphs" are to paragraphs in the Schedule in which such references appear.
- 2.5 The Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement.
- 2.6 Reference to a "person" includes any individual, firm, unincorporated association, body corporate or public authority.
- 2.7 "Comply with" and "compliance" includes observe and perform.
- 2.8 The term "Party" and "Parties" shall mean the Consortium Members (individually or collectively) and the Service Provider as the context so permits or requires.

3. Commencement

This Agreement shall come into effect on the Commencement Date and shall, unless terminated earlier in accordance with Clause 12, continue in force until the Expiry Date.

4. Contracts and Ordering Procedures

- 4.1. This Agreement governs the overall relationship of the Consortium Members with the Service Provider with respect to the supply of Services and Added Value Services and constitutes a standing offer by the Service Provider. In consideration of the Service Provider agreeing to enter into this Agreement and to perform its obligations under it the Authority agrees to pay and the Service Provider agrees to accept on the signing of this Agreement the sum of one pound sterling (£1.00) if demanded.
- 4.2. The Consortium Members shall be entitled (but not required) at any time of this Agreement to issue Instructions to the Service Provider in accordance with the Ordering Procedures. There shall be no obligation on the Consortium Members to give any Instructions or a minimum number of Instructions under this Agreement.
- 4.3. The placing of Instructions under this Agreement by a Consortium Member will lead, in each case, to the creation of a Contract directly between the Consortium Member and the Service Provider on the same terms and conditions of this Agreement.
- 4.4. Any Contract made or arising under this Agreement shall be effective from the date of the Instructions and, unless terminated earlier in accordance with Clause 12, shall continue in force until each of the Parties obligations under the Instructions have been satisfied, whether or not it occurs before the Expiry Date. Where a Party's obligations remain unsatisfied at the Expiry Date, such of the terms of this Agreement as are relevant to the satisfaction of such obligations shall continue in effect until such time as the obligations are satisfied.
- 4.5. Only Legal Officers shall be entitled to issue Instructions. The Service Provider shall not accept Instructions from any other employee of any of the Consortium Members.
- 4.6. All Instructions shall be issued in accordance with the procedures set out in the Ordering Procedures at Schedule 3 and shall be acknowledged by the Service Provider to the Consortium Member using the Instruction Pro-Forma set out at Schedule 5 within 2 Days.

5. Quality Assurance

- 5.1. Throughout the duration of this Agreement the Service Provider shall:
- 5.1.1 discharge its obligations under this Agreement and perform the Services in accordance with its responsibilities under the provisions of the Equalities Act 2010 and any issued codes of practice and/or guidance;
 - 5.1.2 keep proper records and accounts including, but not limited to, such records and accounts reasonably necessary to comply with its obligations pursuant to Clause 15;
 - 5.1.3 at all times for the duration of this Agreement employ sufficient persons of sufficient abilities, qualifications competence and skills for the proper performance of its obligations under this Agreement and give notice in writing of any changes to the Key Personnel identified in Schedule 8;
 - 5.1.4 procure that where a code of practice, directive, guidance or regulation is issued by the Law Society the performance of the Services under this Agreement shall be in compliance with such code of practice, directive, guidance or regulation.

6 Performance

- 6.1 The Service Provider shall at all times for the duration of this Agreement perform the Services in accordance with:
- 6.1.1 the terms and conditions of this Agreement;
 - 6.1.2 The Specification;
 - 6.1.3 The Method Statements (to the extent that they do not conflict with the terms and conditions of this Agreement or the Specification).
- 6.2 The Service Provider shall at all times for the duration of this Agreement maintain sufficient resources to fulfil its obligations under this Agreement.
- 6.3 Time shall be of the essence for the provision of any Services if the Consortium Member indicates to the Service Provider that this is the case.
- 6.4 The Service Provider shall self-assess its performance of the Services in accordance with the requirements set out in the Specification.
- 6.5 The Consortium Co-ordinator shall review the Service Provider's performance in accordance with the provisions in the Specification.
- 6.6 The Service Provider shall send out the Feedback Assessment Form at the conclusion of a case in accordance with the Specification and using the template set out at Schedule 7. The Consortium Co-ordinator may investigate each case where, in their reasonable opinion, the Service Provider appears to have failed to perform the Services in accordance with the provisions of this Agreement.
- 6.7 The Service Provider shall attend any meeting (including Review Meetings) at the request of the Consortium Co-ordinator or Consortium Management Panel to discuss concerns in performance and agree, all Parties acting reasonably, an action plan to improve the level of the Services provided.
- 6.8 The Service Provider shall attend any meeting at the request of a Consortium Member to discuss concerns in performance and agree, all Parties acting reasonably, an action plan to improve the level of Services provided under a Contract.

7 Service Failure

- 7.1 At Agreement level, without prejudice to any other rights or remedies arising under this Agreement if the Service Provider fails to perform the Services in accordance with this Agreement the Service Provider acknowledges and agrees that the Consortium shall

have the right to exercise (in its absolute sole discretion) all or any of the following remedial actions:

- 7.1.1 the Consortium shall be entitled to serve an improvement notice on the Service Provider to require the Service Provider, to prepare and provide to the Consortium Co-ordinator, an improvement plan within 7 Days of receipt of an improvement notice. . The Consortium Co-ordinator shall be entitled to approve such improvement plan and require that the Service Provider implement such improvement plan as soon as reasonably practicable any failure to agree such an improvement plan shall be subject to the Dispute Resolution Procedure;
 - 7.1.2 the Consortium shall be entitled to require the Service Provider, and the Service Provider agrees to attend, within a reasonable time at the request of the Consortium Co-ordinator one or more meetings with the Consortium Co-ordinator/Consortium Management Panel in order to resolve the issues raised by the Consortium in its notice to the Service Provider requesting such meetings;
 - 7.1.3 the Consortium shall be entitled to suspend the Service Provider from bidding in any further competition and/or entering into any Contract with any Consortium Member until such time as, in the Consortium's absolute sole discretion, the Consortium Co-ordinator is satisfied that the Service Provider has implemented such requirements for improvement as set out in the improvement plan and/or implemented an improvement plan submitted and approved by the Consortium Co-ordinator.
- 7.2 In the event that the Consortium has invoked one or more of the remedies set out in clauses 7.1.1 to 7.1.3 and the Service Provider either:
- 7.2.1 fails to implement such requirements for improvement as set out in the improvement notice; and/or
 - 7.2.2 fails to implement an improvement plan approved by the Consortium Co-ordinator pursuant to clause 7.1.1; and/or
 - 7.2.3 fails to comply with any reasonable request made by the Consortium within such reasonable timescales as have been specified by the Consortium
- then (without prejudice to any other rights and remedies of termination provided for in this Agreement), the Service Provider shall be deemed to be in material default and the Consortium shall be entitled to terminate this Agreement.
- 7.3 At Contract level without prejudice to any other rights or remedies arising under the Contract if the Service Provider fails to perform the Services in accordance with the Contract, the Service Provider acknowledges and agrees that the Consortium Member shall have the right to exercise (in its absolute sole discretion) all or any of the following remedial actions:
- 7.3.1 the Consortium Member shall be entitled to serve an improvement notice on the Service Provider to require the Service Provider to prepare and provide to the Consortium Member's Legal Officer, an improvement plan within a reasonable period (as determined by the Consortium Member in consideration of the duration of the Contract). The Consortium Member shall be entitled to approve such improvement plan and require that the Service Provider implement such improvement plan as soon as reasonably practicable any failure to agree such an improvement plan shall be subject to the Dispute Resolution Procedure;

- 7.3.2 the Consortium Member shall be entitled to require the Service Provider, and the Service Provider agrees to attend, within a reasonable time at the request of the Consortium Member one or more meetings with the Consortium Member in order to resolve the issues raised by the Consortium Member in its notice to the Service Provider requesting such meetings;
- 7.3.3 if the Consortium Member decides (in its absolute discretion) that an improvement plan/improvement notice is in appropriate or will not resolve the performance failure the Consortium Member may agree a suitable deduction from the Fees payable for the Services received, any failure to agree such a deduction shall be subject to the Dispute Resolution Procedure;
- 7.3.4 in the event of material default and/or complete breakdown of the relationship between the Consortium Member and the Service Provider, the Consortium Member shall be entitled to engage a replacement provider to complete the Services and recover from the Service Provider all costs associated with procuring such replacement provider and transferring the Services required under the Contract to the replacement provider.

8 Added Value Services

- 8.1 The Service Provider shall with the other Legal Partners provide the Added Value Services in accordance with the Specification at no cost to the Consortium Members.
- 8.2 As soon as reasonably practicable after the Commencement Date the Consortium Management Panel shall meet with the Legal Partners and allocate to each of them some aspect of the Added Value Services (including appointing one Legal Partner as the lead Legal Partner).
- 8.3 The Service Provider who is selected to be the lead Legal Partner for an Added Value Service shall perform all tasks allocated to that role as detailed in the Specification together with any other reasonable tasks requested by the Consortium Co-ordinator.
- 8.4 All Legal Partners shall help the lead Legal Partner appointed under 8.2 perform its tasks and assist with any reasonable requests made by the lead Legal Partner.

9 Completion of Contracts

- 9.1 Within 28 Days of completion of a Contract the Service Provider shall:
 - 9.1.1 ensure that any original document created or completed during the Contract shall be returned;
 - 9.1.2 send electronic copies of all completed documents to the Consortium Member;
 - 9.1.3 send the Completion Proforma and Feedback Assessment Proforma to the Consortium Member in accordance with the Specification.
 - 9.1.4 ensure that invoices have been issued for all Services provided under the Contract.

10 Payment and Invoicing

- 10.1 The Fees for Services provided under a Contract shall be agreed in accordance with the ordering procedure detailed in clause 4. The Service Provider shall not depart from that agreed Fee without the prior written consent of the relevant Legal Officer. The Consortium Member shall have the ability (at its absolute discretion) to write off any Fees charged over and above the agreed Fee if consent has not been obtained in advance.
- 10.2 All Fees and payments to be made under this Agreement shall be made in sterling and in accordance with Schedule 4.

- 10.3 All invoices shall be in the manner of and submitted in accordance with the procedures set out at Schedule 4.
- 10.4 No invoices shall be submitted by the Service Provider for payment unless the Instruction Pro-Forma has been completed and sent by the Service Provider to the instructing Consortium Member.
- 10.5 The Service Provider should submit a single invoice for a billing period for a Contract. The Consortium Member shall not accept any subsequent invoices which overlap in date to invoices already provided for Services provided under a Contract.
- 10.6 If any invoices submitted to a Consortium Member does not comply with the requirements set out in Schedule 4 then the Service Provider shall:-
- 10.6.1 be charged an administration fee of £250 and such administration fee shall be provided to the Consortium Member as a credit note to be used against future invoices (unless the relevant Consortium Member chooses at its absolute discretion not to charge this fee);
 - 10.6.2 review and amend the invoice so that it complies with Schedule 4 within 14 days of the Consortium Member notifying the Service Provider that the invoice is non-compliant;
 - 10.6.3 submit the corrected invoice to the Consortium Member within 28 days of the notification received in accordance with clause 10.6.2.
- 10.7 Invoices that are not compliant with Schedule 4 shall not become payable until they have been rectified and resubmitted in accordance with clause 10.6.
- Invoices compliant with Schedule 4 shall be payable 30 days after receipt unless disputed. Where an invoice is disputed by a Consortium Member, the Consortium Member will not be obliged to pay the disputed invoice until the dispute has been resolved in accordance with clause 17 .
- 10.8 The Service Provider must ensure that all invoices for a relevant financial year are submitted to the relevant Consortium Member by the 31st March in that financial year.
- 10.9 All Fees and payments duly and properly incurred (and undisputed) shall be the liability of the Consortium Member under the Contract formed directly between the Consortium Member and the Service Provider and the Authority shall have no liability in regard to any Fees incurred by a Consortium Member other than under its own Contracts.
- 10.10 Where the Service Provider enters into a Subcontract with a supplier or contractor for the purpose of performing a Contract, it shall cause a term to be included in such a Subcontract that requires payment to be made of undisputed sums by the Service Provider to the Subcontractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Subcontract requirements.

11 Warranties

The Service Provider warrants that it shall perform its obligations under this Agreement and provide or procure the provision of the Services at all times in a professional manner and with reasonable skill and care appropriate to, and in a manner commensurate with, the provision of such services to local authorities.

12 Termination

12.1 Termination of this Agreement

12.1.1 Without Prejudice to the remedies available to the Consortium in clause 7.1 the Consortium (acting through the Consortium Management Panel following consultation with Consortium Members) or the Service Provider may terminate this Agreement by notice in writing to the other if the other of them is in material

breach of this Agreement and shall have failed (where the breach is capable of remedy) to remedy the breach within 20 Days of the receipt of a request in writing from the Party not in breach to remedy the breach, such request setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement.

12.1.2 The Consortium (acting through the Consortium Management Panel) may terminate this Agreement if there is at any time any significant change to the identity of the Key Personnel or if the Service Provider:

12.1.2.1 sells or merges with another person all or any part of its business as lawyers; or

12.1.2.2 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986; or

12.1.2.3 is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

12.1.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income; or

12.1.2.5 has anything similar or analogous happen in relation to it in any jurisdiction outside England and Wales.

12.1.3 The Consortium (acting through the Consortium Management Panel) may terminate this Agreement if any provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

12.2 Termination of a Contract

12.2.1 Without prejudice to the remedies available in clause 7.3 the relevant Consortium Member may terminate any Contract formed under this Agreement if they, in their sole opinion, feel the Services being delivered by the Service Provider have fallen below a standard which they deem to be acceptable.

12.2.2 The relevant Consortium Member may terminate any Contract if any of the provisions contained in clause 12.1.2 apply.

12.2.3 The relevant Consortium Member may terminate any Contract if any provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

13 Suspension of Service Provider

13.1 Without prejudice to the Authority's rights to terminate the Agreement in clause 12.1 above, if a right to terminate this Agreement arises in accordance with clause 12, or if the Service Provider breaches the data processing obligations set out in clause 22.16, the Authority may suspend the Service Provider's right to receive Instructions from the Consortium Members by giving notice in writing to the Service Provider.

13.2 If the Authority provides notice to the Service Provider in accordance with this clause, the Service Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Authority in writing from time to time.

14 Consequences of Termination

14.1 Following termination of this Agreement through expiry, the Service Provider shall complete, on the terms of this Agreement, any Contracts entered into during the period of this Agreement.

14.2 Following termination of this Agreement by the Consortium pursuant to Clause 7.2 or Clause 12.1, the Consortium Members shall have an option, exercisable by written notice to the Service Provider within 20 Days of such termination, either to terminate

forthwith any Contracts entered into prior to such termination or to require the Service Provider to complete the performance of any such Contracts on the terms of this Agreement, and the Service Provider shall comply with any such notice.

- 14.3 The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of the Parties accrued prior to termination.
- 14.4 The Clauses in this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination which shall include but not be limited to Clauses 11, 15, 18, 22.10, 22.15, 22.16, and 22.17.
- 14.5 Each of the Parties shall return to the other of the Parties any documents in its possession or control which contain or record any of the Confidential Information of the other Party.

15 Audit Access

The Consortium Member's auditors may, upon giving not less than 5 Days previous notice in writing, examine and at their own cost take copies of such documents as they may reasonably require which are owned, held or otherwise within the control of the Service Provider (who shall procure that any person acting on its behalf who has such documents and/or other information shall also provide reasonable access) and may require the Service Provider to produce such oral or written explanation as he reasonably and properly considers necessary.

16 Reports & Review Meetings

- 16.1 The arrangements and objectives for the Review Meetings are specified in Schedule 10.
- 16.2 The Service Provider shall prepare and send to the Consortium Co-ordinator the annual Performance Report in accordance with the Specification.

17 Dispute Resolution Procedure

17.1 Fast Track Procedure

- 17.1.1 Prior to any dispute, difference or disagreement being referred to adjudication pursuant to Clause 17.2 the Parties shall seek to resolve the matter as follows:
 - 17.1.1.1 in the first instance the matter shall be considered by the instructing Consortium Member and the Fee Earner's Supervisor, but if they are not able to resolve the matter within 30 days then:
 - 17.1.1.2 the matter shall be referred to the Consortium Co-ordinator and the Service Provider's Key Contact but if they are not able to resolve the matter within 30 days (and it is expected that this will only be the case on rare occasions in extreme circumstances), then:
 - 17.1.1.3 the matter shall be referred for consideration to the Consortium Management Panel and the senior partner of Service Provider.

17.2 Adjudication

- 17.2.1 The Consortium or the Service Provider may refer any dispute or difference arising hereunder to adjudication by a single adjudicator to be agreed between the Parties or failing agreement within 14 days to be appointed by the president for the time being of the Law Society. The decision of the adjudicator shall remain binding and enforceable unless and until a different ruling is made pursuant to a decision of the Court made by either Party pursuant to Clause 17.2.2 or the Parties agree otherwise.
- 17.2.2 In the event of any relevant Party being dissatisfied with the adjudicator's decision then the relevant Party may serve a written notice on the other Party

within 28 days of receipt of the adjudicator's decision of its intention to commence legal proceedings in the English Courts.

17.3 Continuance of Obligations

Unless this Agreement has already been terminated or repudiated, notwithstanding the reference of any dispute or difference for resolution under this Clause 17, each of the Parties shall continue to perform, observe and comply with their respective obligations under this Agreement.

18 Indemnity and Insurance

- 18.1 The Service Provider shall indemnify the Consortium fully against all actions, proceedings, costs, fees, claims, demands, liabilities, losses and expenses whatsoever arising under any statute or at common law in respect of, without limitation, any damage which arises as a consequence of the neglect or default of the Service Provider, to property, real or personal, (including any infringement of third party Intellectual Property Rights) and any injury to persons, including injury resulting in death, arising out of or in the course of or in connection with the performance of, or failure to perform, or breach of any of its obligations under this Agreement and in particular resulting in any failure to perform the Services and/or negligent advice given by the Service Provider (except insofar as such damage or injury shall be due to the negligence of or breaches of this Agreement by the Consortium Members).
- 18.2 The Service Provider agrees to indemnify and keep indemnified and defend at its own expense the Consortium against all costs, claims, damages or expenses incurred by the Consortium or for which the Consortium may become liable due to any failure by the Service Provider or its employees or agents to comply with any of its data processing obligations under clause 22.16 of this Agreement.
- 18.3 The Service Provider shall (but without limiting its obligations and responsibilities under the indemnity given by the Service Provider in this Clause) insure against any liabilities which may occur arising out of the execution of or in carrying out this Agreement including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider. Such insurance shall be effected with an insurer and be for:
- 18.3.1 at least the sum of ten million pounds (£10,000,000) Professional Indemnity Insurance for any one claim or series of claims unlimited in any one period of insurance or for any higher amount specified by the Council and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;
 - 18.3.2 at least the sum of one million pounds (£1,000,000) Public Liability Insurance for any one claim or series of claims unlimited in any one period of insurance or for any higher amount specified by the Council.
- 18.4 The Service Provider shall maintain all required insurances for a minimum period of 7 years following the Expiry Date.
- 18.5 The Service Provider shall at the request of the Consortium (acting through the Consortium Co-ordinator) from time to time produce forthwith such evidence as the Consortium may reasonably require that the Service Provider has complied with its obligation under Clause 18.3, which evidence shall include the insurance policies and receipts for the payment of current premiums PROVIDED ALWAYS that if the Service Provider fails upon request to produce to the Consortium satisfactory evidence that there is in force any of the insurance policies required by Clause 18.3 the Consortium may effect and keep in force any such insurance and the Service Provider shall pay to the Consortium on written demand as a debt any sums expended by it for such purpose.

19 Authorised Representatives

19.1 Appointment

The Service Provider shall appoint an individual to be the Service Provider's Key Contact within 5 Days of the Commencement Date. The Consortium has a Consortium Co-ordinator as named in Clause 1.

19.2 Status

19.2.1 The Service Provider's Key Contact shall be the duly authorised representative of the Service Provider and the Consortium Co-ordinator shall be the duly authorised representative of the Consortium for all purposes connected with this Agreement.

19.2.2 Any notice, information, instruction or other communication given or made to the Service Provider's Key Contact or to the Consortium Co-ordinator shall be deemed to have been given or made to the Service Provider or the Consortium (as the case may be), provided that it has been given, made or subsequently recorded in writing.

19.3 Notification

19.3.1 Following appointment under Clause 19.1 above, the Service Provider shall forthwith give notice in writing to the Consortium Coordinator of the identity of the person appointed as the Service Provider's Key Contact and of any subsequent appointment.

19.3.2 Until notice of a subsequent appointment or of revocation of a current appointment shall have been given the Parties shall be entitled to treat the Consortium Co-ordinator and the Service Provider's Key Contact as the persons last notified.

19.4 Availability and Performance

The Consortium and the Service Provider shall respectively ensure that their authorised representatives or a competent deputy are available at all times when the Services are being provided.

20 Management Fee

20.1 The Consortium reserves the right during the period of the Agreement and for the period of any Contract entered into under this Agreement to introduce a Management Fee provided that it shall not do so on more than two occasions.

20.2 The Consortium shall give the Service Provider a minimum of 3 months' notice in writing if the Management Fee is to be introduced.

20.3 If a Management Fee is introduced the Service Provider shall account to the Consortium for the amount of the Management Fee to be paid and shall pay the amount due to the Authority within 60 days of the end of each Year.

21 Income Return Disclosure

Within 2 months of the end of each Year the Service Provider will send to the Consortium Co-ordinator details of its invoiced income from Consortium Members in that Year in the format & as required by Schedule 9.

22 General Provisions

22.1 Contracts (Rights of Third Parties) Act 1999

Save for each Consortium Member, nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a Party to it.

22.2 Assignment & Sub-contracting

- 22.2.1 The Authority shall be entitled to novate the Agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.
- 22.2.2 A Consortium Member shall be entitled to novate a Contract to any other body which substantially performs any of the functions that previously had been performed by that Consortium Body.
- 22.2.3 Provided that the Authority has given prior written consent, the Service Provider shall be entitled to novate the Agreement where there has been a universal or partial succession into the position of the Service Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Agreement.
- 22.2.4 Provided that the relevant Consortium Member has given prior written consent, the Service Provider shall be entitled to novate any Contracts where there has been a universal or partial succession into the position of the Service Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Agreement.
- 22.2.5 The Service Provider may not sub-contract the performance of any part of the Services without the prior written consent of the Consortium acting through the Consortium Co-ordinator. Such consent being conditional on:-
 - 22.2.5.1 The Service Provider using no more than 3 sub-contractors for the performance of the Services;
 - 22.2.5.2 The proposed sub-contractor being Lexcel (or suitable equivalent) accredited;
 - 22.2.5.3 Any such sub-contracting shall not in any way relieve the Service Provider from its liabilities hereunder and the Service Provider shall be and shall remain fully responsible in respect of the Service notwithstanding such sub-contracting.
- 22.2.6 The Service Provider may only authorise a Sub-Contractor to process the Personal Data:
 - 22.2.6.1 subject to the relevant Consortium Member's prior written consent where the Service Provider has supplied the Consortium Member with full details of such Sub-Contractor and any such guarantees or information the Consortium Member requires about the Sub-Contractor's ability to process the Personal Data in accordance with the requirements set out in this Agreement;
 - 22.2.6.2 provided that the Sub-Contractor's contract is in writing and contains provisions which are no less onerous on the Sub-Contractor as those imposed on the Service Provider under this Agreement and (as may be the case) in accordance with any additional terms or instructions relating to the processing of the Personal Data as may be specified by the Consortium Member; and
 - 22.2.6.3 provided that the Sub-Contractor's contract terminates automatically on termination of a relevant Contract for any reason.
- 22.2.7 Unless otherwise stated to the contrary, any reference to the Service Provider in this Agreement shall include the Sub-Contractor. Notwithstanding any Sub-contracting permitted hereunder, the Service Provider shall remain primarily

responsible for the acts and omissions of its Sub-contractors as though they were its own.

22.3 Waiver

- 22.3.1 No failure or delay on the part of any Party to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.
- 22.3.2 No waiver of any breach or default under this Agreement or any of the terms hereof shall be effective unless such waiver is given in writing and has been signed by the Party waiving its entitlement. No waiver of any breach or default, in accordance with this Clause 22.3, shall constitute a waiver of any other or subsequent breach or default.

22.4 Variation

- 22.4.1 No modification, variation or amendment of any provision in this Agreement shall be effective unless:
 - 22.4.1.1 the Consortium Co-ordinator notifies the Service Provider in writing that it wishes to vary the terms of this Agreement and provides the Service Provider with full written details of any such proposed change; and
 - 22.4.1.2 the Consortium Co-ordinator and the Key Contact, acting reasonably, agree in writing to the variation and a written variation agreement is signed by the Authority and the Service Provider.

provided that the proposed variation does not amount to a material change in the Agreement or the Services.

- 22.4.2 If, by the date 30 Days after notification was given under Clause 22.4.1.1 no agreement is reached by the Parties acting reasonably in relation to any variation requested, the Consortium (acting through the Consortium Management Panel) may, by giving written notice to the Service Provider, either:
 - 22.4.2.1 agree that the Parties shall continue to perform their obligations under this Agreement without the variation; or
 - 22.4.2.2 terminate this Agreement with immediate effect.
- 22.4.3 No modification, variation or amendment of any provision in a Contract shall be effective unless:
 - 22.4.3.1 the Consortium Member notifies the Service Provider in writing that it wishes to vary the terms of the Contract and provides the Service Provider with full written details of any such proposed change; and
 - 22.4.3.2 the Consortium Member and the Key Contact, acting reasonably, agree in writing to the variation and a written variation agreement is signed by the Consortium Member and the Service Provider.
- 22.4.4 If, by the date 20 Days after notification was given under Clause 22.4.1.1 no agreement is reached by the Parties acting reasonably in relation to any variation requested, the Consortium (acting through the Consortium Management Panel) may, by giving written notice to the Service Provider, either:
 - 22.4.4.1 agree that the Parties shall continue to perform their obligations under the Contract without the variation; or

22.4.4.2 terminate the Contract with immediate effect.

22.5 Invalid Clauses

If this Agreement is held to be invalid, amendments to this Agreement may be made by the addition or deletion of wording as appropriate to remove the invalid part or provision but otherwise retain the provision and the other provisions of this Agreement to the maximum extent permissible under applicable law.

22.6 No Agency

22.6.1 No Party shall act or describe itself as the agent of the others, nor shall it make or represent that it has authority to make any commitments on the others' behalf in particular:

22.6.1.1 The employees of the Service Provider are not and shall not hold themselves out to be and shall not be held out by the Service Provider as being agents of the Consortium or any Consortium Member for any purpose whatsoever;

22.6.1.2 The Service Provider is not and shall in no circumstances hold itself out as being an agent of the Consortium or any of the Consortium Members;

22.6.1.3 The Service Provider is not and shall in no circumstances hold itself out as being authorised to enter into any contract on behalf of the Consortium or a Consortium Member, or in any way to bind the Consortium or a Consortium Member to the performance, variation, release or discharge of any obligation.

22.7 Notices

22.7.1 Any notice required or authorised to be given by one Party (the "Notifying Party") to another Party (the "Notified Party") under the Agreement or a Contract shall be in writing and shall either be delivered personally or sent by first class pre-paid post or by electronic mail to the Notified Party at the address stated below or such other address as may be specified by the Notifying Party from time to time, and such notice should be marked for the attention of:

22.7.1.1 **For the Consortium:** Consortium Co-ordinator c/o Legal Services, Nottinghamshire County Council, County Hall, Loughborough Road, West Bridgford, Nottingham, NG2 7QP,

Email: sl.emlawshare@yahoo.com;

22.7.1.2 **For the relevant Consortium Member:** the Legal Officer at the address/email address provided when Instructions were issued;

22.7.1.3 **For the Service Provider:** the Service Provider Key Contact at the address stated at the beginning of this Agreement,

Email: [insert provider key contact email address]

respectively.

22.7.2 Notices shall be deemed duly served:

22.7.2.1 in the case of a notice delivered personally at the time of delivery; or

22.7.2.2 in the case of a notice sent by first class pre-paid post, two clear Days after being posted; or

22.7.2.3 in the case of an electronic mail, if sent during normal business hours then at the time of that transmission and if sent outside normal business hours then on the next following Day provided (in each

case) that a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next Day.

22.7.3 All Parties shall promptly notify the other relevant Parties upon any change of address occasioned during the continuation of the Agreement or Contract respectively.

22.8 Change of Address

Each of the Parties shall give notice to the other of the change or acquisition of any address at the earliest possible opportunity but in any event within 48 hours of such change or acquisition.

22.9 Law and Jurisdiction

The validity, construction and performance of this Agreement shall be governed by English Law and both Parties submit to the exclusive jurisdiction of the English courts.

22.10 Further Action

Each Party agrees to execute, acknowledge and deliver such further instruments and do all further similar acts as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

22.11 Announcements

The Service Provider shall not make any press or other public announcement concerning any aspect of this Agreement, or make any use of the name of the Consortium or any Consortium Member in connection with or in consequence of this Agreement, without the prior written consent of the Consortium Co-ordinator.

22.12 Entire Agreement and Service Provider's Terms

22.12.1 This Agreement, the schedules and the documents annexed to or otherwise referred to in it contains the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior oral or written agreements, arrangements or understandings between the parties provided that nothing in this clause shall operate to exclude any liability for fraud. The Parties acknowledge that they are not relying on any representation, agreement, term or condition which is not set out in this Agreement.

18.11.2 The terms and conditions of this Agreement shall override any payment terms or other contractual conditions of the Service Provider with regard to Services to be performed pursuant to this Agreement.

22.13 Counterparts

This Agreement may be executed in two counterparts each of which shall be deemed an original but the counterparts shall together constitute one and the same agreement.

22.14 Force Majeure

22.14.1 No Party shall be deemed to be in breach of this Agreement or otherwise liable to the others in any manner whatsoever for any failure or delay in performing its obligations under this Agreement arising due to Force Majeure.

22.14.2 If a Party's performance of its obligations under this Agreement is affected by Force Majeure, then:

22.14.2.1 it shall give written notice to the other Party, specifying the nature and extent of the Force Majeure, immediately on becoming aware of the Force Majeure, and will at all times use all reasonable endeavours to mitigate (so far as that is possible) the impact of the Force Majeure;

- 22.14.2.2 subject to the provisions of Clause 22.14.3, the date for performance of such obligation shall be deemed suspended only for a period equal to the delay caused by such event; and
- 22.14.2.3 it shall not be entitled to payment from the other Party in respect of extra costs and expenses incurred by virtue of the Force Majeure.
- 22.14.3 If the Force Majeure in question prevails for a continuous period in excess of 60 Days after the date on which the Force Majeure begins, the Parties shall then be entitled to give notice in writing to the other to terminate this Agreement. The notice to terminate must specify the termination date, which must not be less than 14 Days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, this Agreement will terminate on the termination date set out in the notice.

22.15 Prevention of Bribery

- 22.15.1 The Service Provider:
 - 22.15.1.1 shall not, and shall procure that any Service Provider Party and all Service Provider Personnel shall not, in connection with this Agreement commit a Prohibited Act;
 - 22.15.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority or a Consortium Member, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority/Consortium Member before execution of this Agreement.
- 22.15.2 The Service Provider shall:
 - 22.15.2.1 if requested, provide the Authority/Consortium Member with any reasonable assistance, at the Authority/Consortium Member's reasonable cost, to enable the Authority/Consortium Member to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - 22.15.2.2 within 30 Days of the Commencement Date, and annually thereafter, certify to the Authority in writing compliance with this Clause 22.15 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Service Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.
- 22.15.3 **The Service Provider shall have an anti-bribery policy** (which shall be disclosed to the Authority) to prevent any Service Provider Party or Service Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 22.15.4 If any breach of Clause 22.15.1 is suspected or known, the Service Provider must notify the Authority/Consortium Member immediately.
- 22.15.5 If the Service Provider notifies the Authority/Consortium Member that it suspects or knows that there may be a breach of Clause 22.15.1 the Service Provider must respond promptly to the Authority/Consortium Member's enquiries, co-operate with any investigation and allow the

Authority/Consortium Member to audit books, records and any other relevant documentation.

22.15.6 The Authority may terminate this Agreement, or a Consortium Member may terminate a Contract(s) by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider Personnel (in all cases whether or not acting with the Service Provider's knowledge) breaches Clause 22.15.1. In determining whether to exercise the right of termination under this Clause 22.15.6, the Authority/Consortium Member shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, Sub-Contractor or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:

22.15.6.1 with the authority; or,

22.15.6.2 with the actual knowledge;

of any one or more of the directors of the Service Provider or the Sub-Contractor (as the case may be); or

22.15.6.3 in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had knowledge.

22.15.7 Any notice of termination under Clause 22.15.6 must specify:

22.15.7.1 the nature of the Prohibited Act;

22.15.7.2 the identity of the party whom the Authority/Consortium Member believes has committed the Prohibited Act; and

22.15.7.3 the date on which this Agreement or the relevant Contract(s) will terminate.

22.15.8 Despite Clause 17 (Disputes Resolution Procedure), any dispute relating to:

22.15.8.1 the interpretation of this Clause 22.15; or,

22.15.8.2 the amount or value of any gift, consideration or commission,

shall be determined by the Authority/Consortium member as the case may be and its decision shall be final and conclusive.

22.15.9 Any termination under Clause 22.15.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority/Consortium Member.

22.16 Data Protection

22.16.1 The Service Provider shall (and shall procure that any of its Service Provider Personnel involved in the provision of the Agreement) comply with any notification requirements under the Data Protection Legislation and both Parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Agreement.

22.16.2 Notwithstanding the general obligation in Clause 22.16.1 where the Service Provider is processing any Personal Data supplied to it by, or on behalf of, the Authority, the Consortium or a Consortium Member for the purposes of, or in connection with, this Agreement or any Contract, the Service Provider shall ensure that:

- 22.16.2.1 it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments;
- 22.16.2.2 it has in place appropriate technical and contractual measures, **including a data protection policy**, to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data); and
- 22.16.2.3 it will process such Personal Data only for the purposes of performing this Agreement or any Contract and only in accordance with the Authority/Consortium/Consortium Member (as appropriate) data protection policies and instructions and shall not process Personal Data for any other purpose unless required to do so by law in which case it will process the minimum Personal Data necessary to comply with any such legal obligations;
- 22.16.2.4 it provides the Authority/Consortium/Consortium Member (as appropriate) with such information as the Authority/Consortium/Consortium Member may reasonably require to satisfy itself that the Service Provider is complying with its obligations under Clause 22.16 and/or the Data Protection Legislation;
- 22.16.2.5 it promptly notify the Authority/Consortium/Consortium Member of, and in any event no later than 24 hours after becoming aware of, any unauthorised or unlawful processing, loss of, damage to or destruction of the Personal Data and provide the Authority/Consortium/Consortium Member with full co-operation and assistance in relation to the Authority/Consortium/Consortium Member's investigation, communication of, or reporting of any unauthorised or unlawful processing, loss of, damage to or destruction of the Personal Data or breach of the security measures the Authority/Consortium/Consortium Member becomes aware of; and
- 22.16.2.6 it ensures it does not knowingly or negligently do or omit to do anything which places the Authority/Consortium/Consortium Member in breach of the Authority/Consortium Member's obligations under the Data Protection Legislation;
- 22.16.2.7 it will keep a record of any processing of Personal Data it carries out on behalf of the Authority/Consortium/Consortium Member;
- 22.16.2.8 it provides the Authority/Consortium/Consortium Member with full co-operation and assistance in relation to any dealings the Authority/Consortium Member has with the Supervisory Authority in relation to the processing of the Personal Data. Such co-operation and assistance may include, but not limited to, assisting the Authority/Consortium/Consortium Member with the gathering of information requested by the Supervisory Authority;
- 22.16.2.9 at the request of the Authority/Consortium/Consortium Member, the Service Provider provides the relevant Authority/Consortium/Consortium Member with full co-operation and assistance in relation to the carrying out by the relevant Authority/Consortium/Consortium Member of any privacy impact assessment it conducts in relation to the processing of the Personal

Data or any review of the privacy impact assessment the relevant Authority/Consortium/Consortium Member carries out;

22.16.2.10 it promptly complies with any request from the Authority/Consortium/Consortium Member requiring the Provider to amend, transfer or delete the Personal Data;

22.16.2.11 at the Authority/Consortium/Consortium Member's request, it shall provide to the Authority/Consortium/Consortium Member a copy of all or specified Personal Data held by it in the format and on the media reasonably specified by the Authority/Consortium/Consortium Member; and

22.16.2.12 it shall not transfer Personal Data outside the European Economic Area (EEA) without the prior written consent of the Authority/Consortium/Consortium Member. Where the Service Provider wishes to propose such transfer, it shall provide the Authority/Consortium/Consortium Member with information about the proposed transfer which shall include the following details for consideration by the Authority/Consortium/Consortium Member:

22.16.2.12.1 the Personal Data which will be processed, stored, accessed or transferred outside of the EEA;

22.16.2.12.2 the purposes for which the Personal Data will be processed, stored, accessed or transferred outside of the EEA;

22.16.2.12.3 the countries in relation to which the Personal Data will be processed, stored, accessed or transferred;

22.16.2.12.4 the details of any Subcontractors or third parties who will be processing, storing, accessing or receiving the Personal Data; and

22.16.2.12.5 how the Service Provider (including any of its Subcontractors or third parties) will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be processed, stored, accessed or transferred so as to ensure the Authority/Consortium/Consortium Member's compliance with the Data Protection Legislation.

22.16.2.13 Where the Authority/Consortium/Consortium Member consents to the processing, storing, accessing or transfer of Personal Data outside the EEA mentioned in Clause 22.16.2.12 above, the Service Provider shall:

22.16.2.13.1 implement technical and organisation measures which are necessary for the purpose of protecting Personal Data and ensuring the Authority/Consortium/Consortium Member's compliance with the Data Protection Legislation; and

22.16.2.13.2 comply with such other instructions and shall carry out such other actions as the Authority/Consortium/Consortium Member may notify in writing, including:

22.16.2.13.2.1 incorporating the EU Standard Contractual Clauses (for transfers to processors) (the "Model Contract Terms") into this Agreement or enter into a separate data

processing agreement between the Parties in respect of such Personal Data transfer;

22.16.2.13.2.2 procuring that any Subcontractor or other third party who will be processing, storing, accessing or receiving the Personal Data either enters into a direct data processing agreement with the Authority/Consortium/Consortium Member, and/or the Service Provider, on such terms as may be required by the Authority/Consortium/Consortium Member, which may include the incorporation of Model Contract Terms and technical and organisation measures which the Authority/Consortium/Consortium Member deems necessary for the purpose of protecting Personal Data; and

22.16.2.14 give all reasonable assistance to the Authority/Consortium/Consortium Member on any data protection query or issue.

22.16.3 The Service Provider shall ensure that access to the Personal Data is limited to:

22.16.3.1 those Service Provider Personnel who need access to the Personal Data to meet the Service Provider's obligations under this Agreement; and

22.16.3.2 in the case of any access by any of the Service Provider Personnel, such part or parts of the Personal Data as is strictly necessary for performance of the Service Provider Personnel's duties.

22.16.4 The Service Provider shall ensure that all its Service Provider Personnel:

22.16.4.1 are informed of the confidential nature of the Personal Data;

22.16.4.2 have undertaken training in the laws relating to handling Personal Data; and

22.16.4.3 are aware and act in compliance with the Service Provider's duties and their personal duties and obligations under laws relating to data protection and confidentiality and this Agreement.

22.16.5 The Service Provider shall take reasonable steps to ensure the reliability of its Service Provider Personnel who have access to the Personal Data.

22.16.6 The Service Provider shall notify the Authority/Consortium/Consortium Member within 5 Working Days if it receives a request from a Data Subject for access to that person's Personal Data or in respect of any request that involves the exercise of that Data Subject's relevant rights under the Data Protection Legislation in relation to their Personal Data.

22.16.7 The Service Provider shall provide the Authority/Consortium/Consortium Member with full co-operation and assistance, at no additional cost to the Authority/Consortium/Consortium Member, in relation to:

22.16.7.1 any request made by a Data Subject to have access to that person's Personal Data; and

22.16.7.2 the exercise of any other applicable rights exercised by the Data Subject under the Data Protection Legislation.

- 22.16.8 The provisions of this Clause 22.16 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.
- 22.16.9 In the event of a breach of this clause 22.16 the relevant Consortium Member shall be entitled to engage a replacement provider to complete the Services and recover from the Service Provider all costs associated with procuring such replacement provider and transferring the Services required under the Contract to the replacement provider.
- 22.16.10 The Service Provider shall assist and co-operate with the Consortium Member to ensure an orderly transition of the provision of the Services to any replacement provider and provide such assistance and co-operation as the Consortium Member may reasonably require.
- 22.16.11 The Service Provider shall promptly provide all information concerning the provision of the Services which may reasonably be requested by the Consortium Member for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Consortium Member or any replacement provider to conduct due diligence.
- 22.16.12 Further details about the processing of Personal Data under this Agreement are set out in Schedule 11.

22.17 Confidentiality and Freedom of Information

- 22.17.1 Subject to Clause 22.17.2, the Service Provider agrees:
- 22.17.1.1 to keep the Confidential Information in strict confidence and secrecy and not to disclose the Confidential Information to any third party (save as permitted by Clause 22.17.2);
- 22.17.1.2 not to use the Confidential Information save for enjoying its rights and complying with its obligations under this Agreement or any Contract;
- 22.17.1.3 to restrict the disclosure of the relevant and necessary parts of the Confidential Information to such of its Service Provider Personnel who of necessity need the same in the performance of their duties as envisaged by this Agreement and in such circumstances to ensure that such Service Provider Personnel are aware of the confidential nature of the Confidential Information and keep the same strictly confidential.
- 22.17.2 The Service Provider shall be entitled in good faith to divulge any Confidential Information without the approval of the Consortium (acting through the Consortium Co-ordinator) in relation to this Agreement or without the approval of the Consortium Member (acting through its instructing Legal Officer) in relation to a Contract :
- 22.17.2.1 to the extent that the Confidential Information is in the public domain otherwise than by breach of this Clause 22.17;
- 22.17.2.2 to the extent that the Confidential Information is required to be disclosed by the Service Provider by law or otherwise in legal proceedings (which shall include any requirement of an expert or adjudicator) or by a regulatory authority; and

- 22.17.2.3 to the extent that the Confidential Information needs to be disclosed by the Service Provider for the purposes of obtaining professional advice in connection with this Agreement (but only on the basis that it is disclosed in absolute confidence);
- 22.17.3 The Service Provider acknowledges that each Consortium Member is subject to the FOI Legislation and agrees to assist and co-operate with each Consortium Member at no additional cost or charge to the Consortium Member to enable the Consortium Member to comply with its obligations under the FOI Legislation relevant to the Agreement.
- 22.17.4 Without prejudice to the generality of Clause 22.17.3, the Service Provider shall, and shall procure that its Sub-Contractors (as may be approved by the Consortium Co-ordinator under Clause 22.2.4) shall:
- 22.17.4.1 transfer to the relevant Consortium Member all Information Requests that they receive as soon as practicable and in any event within 2 Days of receiving an Information Request; and
- 22.17.4.2 in relation to Information held by the Service Provider or Sub-Contractor on behalf of the Consortium Member, provide the Consortium Member with details about and/or a copy of all such Information that the Consortium Member requests and such Information shall be provided within 7 Days of a request from the Consortium Member, and in such form as the Consortium Member may reasonably specify.
- 22.17.5 The Service Provider acknowledges that each Consortium Member is responsible for determining, at its absolute discretion (but having regard to any guidance or codes of practice issued by the Information Commissioner or the Department of Constitutional Affairs) whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Service Provider shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Consortium Member.
- 22.17.6 The Service Provider acknowledges that each Consortium Member may be obliged under the FOI Legislation to disclose Information without consulting the Service Provider.
- 22.17.7 In relation to any Information Request involving Information held by or relating to the Service Provider, each Consortium Member acknowledges that will, when handling such a Request and wherever practicable, notify the Service Provider and will have due regard to any representation made by the Service Provider to the effect that any such Information is commercially sensitive or confidential.
- 22.17.8 For the avoidance of doubt, the provisions of this Clause 22.17 shall be directly enforceable by individual Consortium Members and shall survive any termination of this Agreement.

22.18 **Modern slavery**

The Service Provider shall (where applicable), and shall procure that its parent company, subsidiaries, any suppliers and sub-contractors shall (where applicable), comply with the provisions of section 54 of the Modern Slavery Act 2015 and shall provide to the Authority (at no charge) such information as the Authority may reasonably require to demonstrate that the Service Provider, its parent company, subsidiaries, any suppliers and sub-contractors

(where applicable) have complied, or are exempt from such compliance, with the provisions of Section 54 of the Modern Slavery Act 2015.

IN WITNESS whereof this Agreement has been entered into as a deed the day and year first above written by the signatures of their authorised representatives

The COMMON SEAL of)
THE NOTTINGHAMSHIRE COUNTY)
COUNCIL was hereunto affixed)
In the presence of:)

.....

Authorised Signatory

Print name

Position

EXECUTED AS A DEED by **[NAME OF SERVICE PROVIDER]** by

..... (Signature)

Print name

Position

Witness Signature

Witness name

Witness occupation

Witness address

Schedule 1: List of Consortium Members as at [date]

[to be inserted at contract award]

Schedule 2: Part 1 - Service Specification

[to be inserted at contract award]

Schedule 2: Part 2 – Method Statements

[to be inserted at contract award]

Schedule 3: Ordering Procedures

If a Consortium Member wishes to source Services through this Agreement it has two options:

- 1) Direct ordering without further competition; OR**
- 2) Further competition procedure (mini-tender exercise).**

Once Services are secured in accordance with either route above the Consortium Member shall, through its Legal Officer(s), issue an Instruction to the successful Service Provider which shall form a Contract between the Consortium Member and the Service Provider for the provision of Services.

Please note the ordering procedures may change during the period of this Agreement (for example the development of a Portal for ordering). Any changes will be notified to the Service Provider and the Consortium Members.

1. DIRECT ORDERING WITHOUT FURTHER COMPETITION

- 1.1. The Consortium Member shall first determine from:
 - 1.1.1. information supplied by the Service Provider (whether incorporated in their responses to the Consortium tender or otherwise);
 - 1.1.2. information publicly available (including through the Service Providers' own web-sites, legal directories or elsewhere); and
 - 1.1.3. information shared between the Authority and the Consortium Members, which Service Provider(s) is/are capable of performing the required Services.
- 1.2. The Consortium Member may then choose a capable Service Provider with whom to place Instructions in one of the following ways:
 - 1.2.1. by choosing the Service Provider who demonstrably offers best value for money for its requirement when judged against the criteria of:
 - 1.2.1.1. speed of available response (including, without limitation, capacity to meet required deadlines and, where relevant, geographical location);
 - 1.2.1.2. quality (including as appropriate: capability, expertise, past performance, availability of resources and proposed methods of undertaking the work); and
 - 1.2.1.3. price; or
 - 1.2.2. by operating a rota system between capable Service Providers.

2. FURTHER COMPETITION/ MINI- COMPETITION PROCEDURE

Consortium Member's Obligations

- 2.1. Any Consortium Member ordering the Services under this Agreement through a further competition may:
 - 2.1.1. adopt criteria set out in paragraph 1.2 when developing its Statement of Requirements for the Services and identify the Service Providers capable of supplying the Services;
 - 2.1.2. invite tenders by conducting a further-competition for the Services it requires and in particular:
 - 2.1.2.1. the Consortium Member shall:
 - a. invite the Service Providers to develop a proposed statement of work setting out their proposals in response to the Statement of Requirements (a "Proposal") and submit a Proposal in writing;

- b. set a time limit for the receipt of Proposals which takes into account factors such as the complexity of the subject matter of the contract and the time needed to submit Proposals; and
 - c. keep each Statement of Requirements and Proposal confidential until the time limit agreed by the Parties has expired;
- 2.1.3. apply the criteria set out in paragraph 1.2.1 to the Service Providers' compliant Proposals submitted as the basis of its decision whether to issue Instructions for the Services it requires;
- 2.1.4 on the basis set out above, award a Contract by placing an Instruction with the successful Service Provider;
- 2.1.5 provide unsuccessful Service Providers with feedback in relation to the reasons why their Proposal was unsuccessful if requested.

Service Providers' Obligations

- 2.2. The Service Providers shall in writing, by the time and date specified by the Consortium Member in accordance with paragraph 2.1.2.1.b provide the Consortium Member with either:
 - 2.2.1. a statement to the effect that it does not wish to submit a Proposal in relation to the relevant Statement of Requirements; or
 - 2.2.2. the Proposal made in respect of the relevant Statement of Requirements. The Proposal should include, as a minimum:
 - 2.2.2.1. details of the fee earner(s) who would be undertaking the work;
 - 2.2.2.2. how the work would be dealt with/the approach to be taken;
 - 2.2.2.3. the proposed Fees for the work based on the Fees set out in Schedule 4 (Fees and Invoicing), including any fixed fee or fee discounts offered, together with a breakdown of how the Fees are calculated.
- 2.3. The Service Provider agrees that:
 - 2.3.1. all Proposals submitted by the Service Provider in relation to a further competition held pursuant to this paragraph 2 shall remain open for acceptance by the Consortium Member for ninety (90) Days (or such other period specified in the invitation to tender issued by the relevant Consortium Member); and
 - 2.3.2. all Proposals submitted by the Service Provider are made and will be made in good faith and that the Service Provider has not fixed or adjusted, and will not fix or adjust, the detail or amount of the offer by or in accordance with any agreement and arrangement with any other person. The Service Provider certifies that it has not and undertakes that it will not:
 - 2.3.2.1. communicate to any person other than the Consortium Member inviting these offers the amount or approximate amount of the offer, except where the disclosure, in confidence, of the approximate amount of the offer was necessary to obtain quotations required for the preparation of the offer; or
 - 2.3.2.2. enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from making an offer or as to the amount of any offer to be submitted.

Shortlists and Responsibility for Awards

- 2.4. A Consortium Member may choose two or more of the Service Providers to form a shortlist of providers to carry out anticipated work of a particular type. Following the creation of such a shortlist the Consortium Member may award work of that type to members of that shortlist in accordance with the methods set out in paragraph 1.2.
- 2.5. The Service Provider acknowledges that each Consortium Member is independently responsible for the conduct of its award of Contracts under this Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
 - 2.5.1. the conduct of the Consortium Members in relation to this Agreement; or
 - 2.5.2. the performance or non-performance of any Contracts between the Service Providers and the Consortium Members entered into pursuant to this Agreement.

3. INSTRUCTIONS

- 3.1. Once a Consortium Member has selected a Service Provider following the procedure set out in this Schedule the Consortium Member shall place Instructions with the Service Provider in writing (which may include e-mail if the Consortium Member wishes), unless the urgency of the situation requires otherwise. Where verbal Instructions are given they shall be confirmed in writing by the Service Provider to the Consortium Member within 2 Days.
- 3.2. The Parties acknowledge that Instructions may be sent electronically.

Accepting Instructions

- 3.3 All Instructions shall be acknowledged by the Service Provider in writing by completing and sending the **Instruction Pro-Forma** using the template set out at Schedule 5 within 2 Days of receiving the Instructions.
- 3.4 If the Service Provider:
 - 3.4.1 notifies the Consortium Member that it declines to accept the Instructions; or
 - 3.4.2 the time-limit referred to in paragraph 2.3.1 has expired;then the offer from the Consortium Member to the Service Provider shall lapse and the relevant Consortium Member may offer those Instructions to another Service Provider.

Schedule 4: Fees and Invoicing

1 Fees

1.1 The Fees shall be fixed for the period of this Agreement and any Contract formed under this Agreement unless an alternative fee is agreed via the mini-competition process set out in Schedule 3.

1.2 The Fees shall be calculated on the following scale:

Fee Earner	Hourly Rate £
Partner/Consultant	
Senior Solicitor – over 5 years PQE	
Associate Solicitor – over 3 years PQE	
Solicitor – less than 3 years PQE	
Trainee Solicitor	
Other Fee Earner	

1.4 Disbursements shall only be charged in accordance with the Specification.

2 Invoicing Procedure

2.1 The Service Provider shall be entitled to issue an invoice or invoices to the instructing Consortium Member in respect of Fees for Services in accordance with this Schedule 4. **No invoices can be issued or will become due and payable unless and until an Instruction Pro-Forma has been completed and sent by the Service Provider to the instructing Consortium Member.**

2.2 Every invoice raised by the Service Provider shall be a fully itemised bill setting out:

2.2.1 the case name, which shall clearly identify the matter and what it relates to;

2.2.2 the Consortium Member's allocated case number;

2.2.3 listing the fee earners and their hourly rates;

2.2.4 the dates that work was undertaken and the time spent by each fee earner;

2.2.5 a narrative of the work undertaken on each date to justify the time spent;

2.2.6 disbursements incurred that month;

2.2.7 the total amount invoiced that month;

2.2.8 all applicable VAT (on fees and where relevant disbursements (i.e. where VAT is not already included in the disbursement fee)); and

2.2.9 the total amount billed on the case overall.

2.3 Invoices shall be addressed directly to the instructing Consortium Member marked for the attention of the instructing Legal Officer (or other authorised person as notified by the Consortium Member to the Service Provider)

2.4 **A separate invoice shall be issued for each matter/case and shall be submitted monthly to the Consortium Member and all invoices shall be submitted to the Consortium Member at the same time each month unless the relevant Consortium Member requests invoices to be submitted to it at a different frequency (e.g. quarterly or annually).**

Schedule 5: Instruction Pro-Forma

EM LawShare Instruction Pro-Forma (to be completed by the partner firm)

Name of EMLS Member:	
Name of Partner Firm:	
Case Name:	
Date Instructions Received:	
Allocated Case Number:	
Purchase Order Number	

Consortium Member Information

<u>Name of Legal Contact Officer:</u>	Tel No	
	Fax No	
	e-mail	
<u>Name of Client Officer:</u>	Tel No	
	Fax No	
	e-mail	

Legal Partner Information

<u>Name of Fee Earner:</u>	Tel No	
	Fax No	
	e-mail	
<u>Name of Fee Earner's Supervisor:</u>	Tel No	
	Fax No	
	e-mail	

Identify Main Work Area (10 Work Areas):

Reason for referral of instructions	Delete as applicable : <ul style="list-style-type: none"> • Specialism • Capacity • Client urgent instructions
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Description of Work / Background to matter / Any special instructions / Key Dates or Milestones:

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Cost Estimate:	£
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Conflict of Interest Check and no conflict?	YES/NO
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If conflict identified please give details:

Please e-mail completed form to Legal Officer Contact

Schedule 6: Completion Pro-Forma

EM LawShare Completion Pro-Forma	
• Name of Authority:	•
• Name of Legal Partner:	•
• Case Name:	•
• Allocated Case Number:	•
• Date Completed:	•

Consortium Member Information		
<u>Legal Officer Contact:</u>	Tel No	
	e-mail	
<u>Name of Client Officer:</u>	Tel No	
	e-mail	
Legal Partner Information		
<u>Name of Fee Earner:</u>	Tel No	
	e-mail	
<u>Name of Fee Earner's Supervisor:</u>	Tel No	
	e-mail	
Narrative of case/work undertaken:		
Outcome of case:		
Key documents produced and provided (what documents, who sent to, on what date) and location of original documents:		
Decision number:		
Total Cost:	£	

Any other relevant information/steps to be taken in the future/lessons learned/policy considerations:

Please e-mail the completed form to the Legal Officer Contact

Schedule 7: Feedback Assessment Form

EM LawShare Feedback Assessment Form

We are committed to delivering a high quality service to EM LawShare members and always welcome constructive comments on how we have performed and your suggestions as to how we could improve. We would be grateful if you should spend a short time completing the following questions.

1. Name of Authority:	
2. Name of Legal Partner: 3.	4.
5. Case Name:	6.
7. Work Category:	8.

1 Was your contact with the Legal Partner both courteous and supportive?

Strongly Agree	Agree	Disagree	Strongly Disagree
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2 Did you receive legal advice within the desired timescale?

Strongly Agree	Agree	Disagree	Strongly Disagree
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3 Were you kept informed of progress at suitable intervals?

Strongly Agree	Agree	Disagree	Strongly Disagree
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4 Did the Legal Partner understand your requirements and provide suitable advice?

Strongly Agree	Agree	Disagree	Strongly Disagree
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5 Was the service provided value for money?

Strongly Agree	Agree	Disagree	Strongly Disagree
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6 How did you rate the overall service provided by the Legal Partner in this case?

Very Good	Good	Fair	Not Satisfactory
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7 Any additional comments that you wish to raise:

Please e-mail completed form to: 1. Legal Partner

Thank you for your time

Schedule 8: Key Personnel

Work Area	Key Contact
Administrative & Corporate Governance	Name: Email: Tel:
Adult Services	Name: Email: Tel:
Civil Litigation (including personal injury)	Name: Email: Tel:
Contract/Commercial/Procurement	Name: Email: Tel:
Conveyancing/Property	Name: Email: Tel:
Criminal Litigation	Name: Email: Tel:
Education	Name: Email: Tel:
Employment	Name: Email: Tel:
Housing	Name: Email: Tel:
Planning/Highways/Environmental	Name: Email: Tel:

Schedule 9: Annual Income Return

Annual Income Return

Within two months of the end of the previous Year, the Service Provider shall complete & return to the Consortium Co-ordinator an annual usage return spreadsheet in the format provided, giving the following information:

- The total invoiced income from Consortium Members for that Year less VAT & disbursement
- For each Consortium Member the invoiced sum in respect of each of the 10 Work Areas for that Year less VAT & disbursements

Schedule 10: Review Meetings

- 1 Review Meetings shall take place in accordance with this Schedule if so requested by the Consortium Co-ordinator/Consortium Management Panel.
- 2 Review Meetings shall be held annually at a time and place to be agreed between the Service Provider's Key Contact and the Consortium Co-ordinator.
- 3 The Review Meetings may be attended by other representatives of the Service Provider and the Consortium as mutually agreed between the Parties.
- 4 The Review Meeting agenda shall include, but shall not be limited to, the following:
 - reviewing the annual Performance Report from the Service Provider prepared in accordance with the Specification;
 - discussing any necessary improvement actions;
 - reviewing the annual usage return spreadsheet;
 - a general review of the performance of the Services provided; and
 - any policy and practice issues relating to this Agreement.

Individual Consortium Members may also request review meetings with the Service Provider's Key Contact if requested.

If individual Consortium Members cannot resolve any issues with the Service Provider at such meetings issues will be raised in writing with the Consortium Co-ordinator who will refer the matter to the Consortium Management Panel as appropriate and/or discuss at/call a Review Meeting as necessary.

Meetings can be in person or by telephone/video conference facilities.

Schedule 11: Further Details relating to the processing of Personal Data

1. This Schedule sets out further details regarding the processing of Personal Data under the Agreement or any Contract:

Subject Matter of the processing

2. The subject matter of the Personal Data being processed will include Personal Data relating to Data Subjects in respect of any matter on which professional legal advice being sought by the Authority/Consortium/Consortium Member in respect of that matter or which is otherwise relevant to the provision of the Services.

How long the processing is carried out for

3. The processing of Personal Data by the Service Provider will be carried out for the period during which the Services are required and any period during which the Service Provider is required to maintain records of such advice in accordance with this Agreement and any regulatory and legal requirements.

What processing is being done

4. The processing of Personal Data will include the transmission of Personal Data relating to Data Subjects required in order for the Service Provider to effectively provide the Services and the legal advice sought. It may involve being processed on systems of the Service Provider for the purposes of delivering the Services.

The purpose of the Processing

5. Personal Data will be processed for the purposes of the Service Provider effectively delivering the Services and providing the legal advice and assistance sought.

Type of Personal Data being processed

6. Personal Data may include any type of Sensitive Personal Data or non-sensitive Personal Data – this will be dependent on the Services being provided and the legal advice being sought and the nature of the Personal Data required to be processed in order for that advice to be provided.

Categories of Data Subject

7. The categories of Data Subjects in respect of whose Personal Data will be processed will depend on the nature of the legal advice sought.

Obligations and rights of the data controller –

8. The obligations and rights of the Data Controller are set out in this Agreement and any Contract.

9. Further details about the processing of Personal Data may be specified by the relevant Consortium Member in the Instructions Pro-Forma. The Instructions Pro-Forma may include additional instructions in relation to the processing of Personal Data and may require, amongst other things, the relevant parties enter into an Information Sharing Agreement in relation to the processing of Personal Data for the purposes of the ordered Services.