

BRIEFING NOTE: EM LAWSHARE CONSORTIUM AGREEMENT

1. PURPOSE

- 1.1 The Agreement is required to: (a) formally constitute the Board and authorise it to procure and manage the legal services framework on behalf of the Members; (b) document the basis on which the Board directs WNC to act as legal host and to sign the framework on its behalf; and (c) describe the roles, responsibilities and liabilities of Members (including WNC as Host Member) and Board Members.

2. STRUCTURE OF THE AGREEMENT

- 2.1 The Agreement is structured as follows:

- 2.1.1 Front-end terms and conditions: These set out the core legal framework governing the consortium, including roles, liability, indemnities, termination rights and dispute resolution.
- 2.1.2 Schedules: These provide operational and governance information, supporting the front-end terms:

Schedule 1 – The Host Services

- (a) Details obligations and services provided by WNC, including the procurement and framework management services and Consortium Co-Ordinator services.

Schedule 2 – Framework Access Agreement

- (b) Sets out obligations for Members to access the legal services framework, including call-off procedures.

Schedule 3 – Board Terms of Reference

- (c) Contains the Board's terms of reference, outlining composition, decision-making powers and quorum. The Board will publish its Delegation of Functions and Governance Documents (including Operating Principles, Statement of Intent and Code of Conduct) on the EMLS website.

Schedule 4 – Agreement of Adherence

- (d) Provides the template for new Members joining the consortium, confirming agreement to be bound by the terms of the Agreement.

3. ROLES AND GOVERNANCE

3.1 The Board

- 3.1.1 Procures and manages the framework on behalf of Members.
- 3.1.2 Acts in accordance with its terms of reference (Schedule 3). May delegate functions to Groups and to WNC.
- 3.1.3 Approves expenditure from service providers' fees, manages disputes and oversees governance.
- 3.1.4 Maintains an up-to-date Delegation of Functions and other governance documents on the EMLS website.

3.2 Board Members

- 3.2.1 Attend board meetings, contribute expertise and act in the Consortium's best interests.
- 3.2.2 Carry out their role in good faith, exercising due care and diligence.
- 3.2.3 May resign on 30 days' written notice. Vacancies are advertised amongst Members.

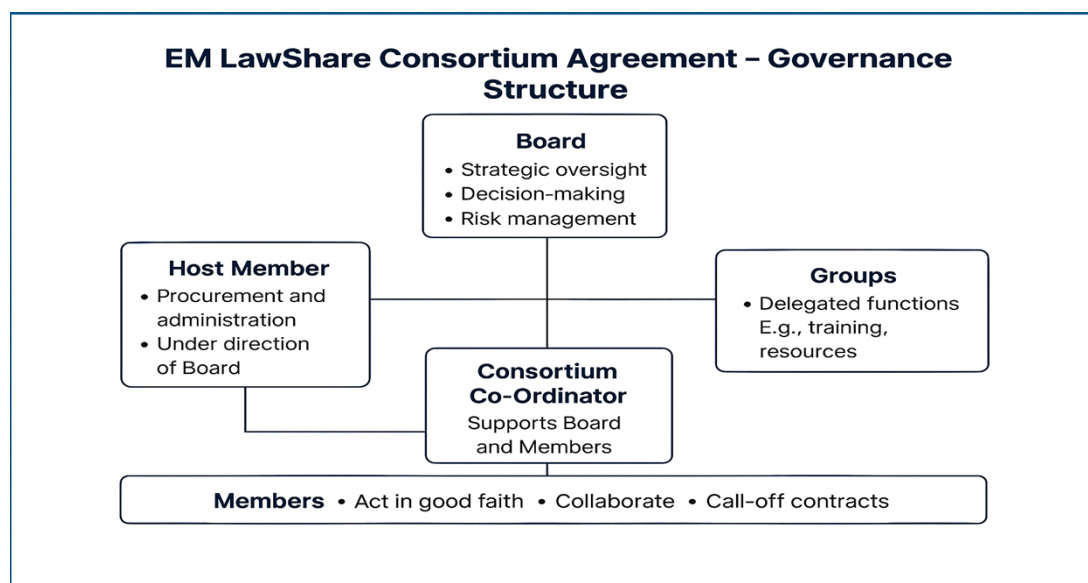
3.3 Members

- 3.3.1 Act collaboratively and in good faith.
- 3.3.2 Comply with procurement, data protection and legal obligations when calling off from the framework agreement.

3.4 Host Member

- 3.4.1 Provides the Host Services (Schedule 1) including procurement and Consortium Co-ordinator functions.
- 3.4.2 Acts only under Board direction; cannot act independently.

The diagram below illustrates the governance structure and roles within EM LawShare:



4. KEY TERMS AND STRUCTURE

4.1 Term – Clause 2

Runs until the framework agreement expires (up to 6 years), unless terminated earlier.

4.2 Adhering members – Clause 6

Eligible authorities may join by signing an agreement of adherence; local authorities do not require Board approval, while non-local authorities do. Membership takes effect on signing, at which point the Member gives retrospective consent to the Host Member (on behalf of the Board) to have procured the framework agreement.

4.3 Liability and Indemnity– Clause 7

- 4.3.1 The Members jointly procure the framework (authorising the Board to carry this out through the Host Member as legal host) and acknowledge that, in the event of challenge by a disgruntled legal services supplier, all Members are jointly and severally liable. We consider the risk of challenge from a disgruntled supplier to be low.
- 4.3.2 Each Member is responsible for its own acts and omissions, and indemnities apply where negligence or wilful misconduct occurs. Each Member is solely liable for its procurement of call-off contracts. The only real conceivable breach that could result in a legal challenge is when a Member calls-off the framework in an unlawful way and all Members are named on the subsequent claim form and suffer loss. We consider this very unlikely: (a) because we consider the risk of challenge to be low; and (b) because the non-calling off Members would not be liable to a supplier at call-off stage and so the calling-off Member would presumably seek to clarify this with the supplier such that the non-calling off Members suffered no loss.
- 4.3.3 The Host Member is indemnified when acting wholly under Board instructions but remains liable for its own negligence or wilful misconduct and will indemnify the Members in the event of loss. The only real conceivable breach is that the Host Member procures the framework agreement in a non-compliant way in contradiction of the Board's instructions.
- 4.3.4 Board Members are protected from liability to Members when acting in good faith and exercising due care and diligence. As they are acting as representatives of their employer Member, in their role as Board Member, they will be indemnified through the relevant Member's insurance.
- 4.3.5 There is no cap on liability for death, personal injury, or fraud, as is required by law.
- 4.4 **Dispute Resolution – Clause 8**
 - 4.4.1 Escalates from Co-Ordinator to the Board before litigation.
- 4.5 **Exit and Termination Rights – Clauses 14 and 15**
 - 4.5.1 Termination of the Agreement can be effected at any time by mutual agreement of Members.
 - 4.5.2 Individual Members may exit on 3 months' written notice or such other period as the Board may agree, acting reasonably.
 - 4.5.3 The Board may require a Member to leave for insolvency or a material breach that cannot be remedied.
- 4.6 **Variation – Clause 17**
 - 4.6.1 The Board may unilaterally vary its terms of reference and any other operational or governance documents (updated versions shall be published on the EMLS website)
 - 4.6.2 Any other variations to the Agreement must be agreed in writing by each member.
- 4.7 **Execution**
 - 4.7.1 The Agreement and subsequent agreements to adhere can be signed under hand, rather than sealed.