

DATED _____

Draft (1) 02/11/22

(1) THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

(2) HOOPLE LIMITED

SERVICES AGREEMENT

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THIS AGREEMENT is made on [date]

BETWEEN:

- (1) The County of Herefordshire District Council of Plough Lane, Hereford, HR4 OLE ("**Council**"); and
- (2) Hoople Limited, a company incorporated in England under number 07556595 whose registered office is at Plough Lane, Hereford, HR4 OLE ("**Hoople**")

(each of Hoople and the Council being a "**party**" and together Hoople and the Council are the "**parties**").

BACKGROUND:

- (A) The Council is a shareholder in Hoople along with two other public sector shareholders.
- (B) Hoople is a company that currently benefits from the exemption under Regulation 12 of the Public Contracts Regulations 2015 (PCR). This exemption allows the Council to commission services from Hoople without the need to comply with other provisions of the PCR.
- (C) The parties have agreed that Hoople shall supply services to the Council from time to time on the basis of Work Packages as requested by the Council and agreed between the parties.
- (D) This Agreement sets out the Work Packages to be provided by the Hoople and the basis on which further Work Packages shall be agreed, and includes:
 - (a) a high level description of the Services that Hoople has undertaken to provide;
 - (b) a description of the ordering procedure under which the Council may order Work Packages or further Statements of Work;
 - (c) a Pricing Schedule [and pricing mechanism for the Services]; and
 - (d) governance arrangements for the strategic management of the relationship between the Council and Hoople.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions).
- 1.2 In this Agreement:
 - 1.2.1 a reference to this Agreement includes its schedules, appendices and annexes (if any);
 - 1.2.2 a reference to a party includes that party's personal representatives, successors and permitted assigns;
 - 1.2.3 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
 - 1.2.4 a reference to a gender includes each other gender;
 - 1.2.5 words in the singular include the plural and vice versa;
 - 1.2.6 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.7 the table of contents, background section and any clause, schedule or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement; and

1.2.8 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time.

2. PARTNERING PRINCIPLES AND OBJECTIVES

2.1 The Council is entering into this Agreement in order to commission certain services on behalf of the Council through a partnership orientated relationship with Hoople.

2.2 To support this, the Council and Hoople shall work collaboratively in a spirit of mutual trust and co-operation when performing their obligations under this Agreement.

3. COMMENCEMENT AND TERM

3.1 This Agreement commences on the Commencement Date and shall continue in force until [] 2028 when it shall automatically terminate, unless terminated earlier in accordance with clause 18 or clause 30.3 or extended in accordance with clause **Error! Reference source not found.** (the "Term").

3.2

4. HOOPLE OBLIGATIONS

4.1 During the Term, Hoople agrees to supply, and the Council agrees to purchase, Services on the terms set out in this Agreement.

4.2 Hoople shall, and shall procure that the Hoople Personnel shall at all times and in all respects:

4.2.1 perform its obligations under this Agreement, including in relation to the supply of the Services in accordance with:

- (a) applicable Law;
- (b) the terms of this Agreement; and
- (c) each of the Work Packages;

4.2.2 achieve the Milestones by the Milestone Dates set out in each Work Package;

4.2.3 comply with the Policies;

4.2.4 comply with any additional or special responsibilities and obligations of Hoople specified in each Work Package;

4.2.5 co-operate with the Council in all matters arising under this Agreement or otherwise relating to the performance of the Services;

4.2.6 use the Performance Location in an efficient manner and for the sole purpose of providing the Services;

4.2.7 provide all information, documents, materials, data or other items necessary for the provision of the Services to the Council in a timely manner;

4.2.8 inform the Council in a timely manner of any matters (including any health, safety or security requirements) which may affect the provision of the Services or the performance of any Work Package;

4.2.9 ensure that all tools, equipment, materials or other items used in the provision of the Services are suitable for the performance of the Services, in good condition and in good working order; and

4.2.10 obtain and maintain all necessary licences, permits and consents required to enable it to perform the Services and otherwise comply with its obligations under this Agreement.

4.3 Hoople shall ensure that it has sufficient, suitable, experienced and appropriately qualified Hoople Personnel to perform this Agreement in accordance with the timescales detailed herein.

5. **COUNCIL OBLIGATIONS**

5.1 To the extent reasonably necessary for Hoople to perform its obligations under this Agreement, the Council shall provide for Hoople and/or Hoople Personnel to:

5.1.1 access to the Council Materials;

5.1.2 access to the Performance Location; and

5.1.3 receive such other support as detailed in the Work Package.

6. **WORK PACKAGES**

6.1 The Council may at any time provide Hoople with a written request for Services substantially in the form of the draft template set out in Schedule 4 or in any other form that the parties may agree in writing from time to time.

6.2 Unless agreed otherwise, the parties shall agree the terms of the Work Package within 10 Business Days of the date of the request;

6.3 Where the Services are Services of the type which require the parties to agree a Statement of Work as part of the Work Package then that Statement of Work shall be agreed by the parties pursuant to clause 6.4.

6.4 Where the Services required by the Council are Services of the type which require the parties to agree a Statement of Work, then Hoople shall, at its cost and expense:

6.4.1 submit a draft Statement of Work to the Council within 10 Business Days of identification of the requirement;

6.4.2 promptly provide all necessary advice, support and assistance as may be required by the Council from time to time in considering the draft Statement of Work;

6.4.3 promptly, update and amend the draft Statement of Work from time to time as necessary as a result of its interactions with the Council pursuant to clause 6.4.2; and

6.4.4 Hoople sign the Statement of Work and provide it to the Council for signature when it is agreed. The signed Statement of Work shall complete the draft Work Package.

6.5 The Council shall be entitled to amend or withdraw a Work Package by giving Hoople notice in writing in relation to any Services where performance has not commenced.

6.6 Each Work Package shall constitute a binding obligation on Hoople to supply the Services in accordance with the terms of the Work Package and this Agreement.

6.7 No variation to a Work Package shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Council, or otherwise in accordance with the provisions of clause 9.

6.8 No Work Packages shall be placed following the date on which notice is validly served pursuant to clauses [7.5.1,]18 or 30.3, or the date on which the Agreement expires pursuant to clause 3.

6.9 Each Work Package shall form part of and be interpreted in accordance with the provisions of this Agreement.

7. PERFORMANCE OF THE SERVICES

7.1 Each Work Package shall specify the Performance Location and the Council shall make such premises available for Hoople on such terms agreed between the parties and detailed in the Work Package.

7.2 Hoople shall perform the Services in accordance with any commencement or end dates specified for performance and shall achieve the Milestones by the Milestone Dates, in each case as specified in the corresponding Work Package. Services which do not have specified commencement or end dates or Milestone Dates shall be performed by Hoople as soon as possible but, in any event, within a reasonable period of time.

7.3 Following performance of the Services or a relevant part of the Services as the Council may require, Hoople shall provide written notification to the Council stating:

7.3.1 the date and reference number of the Work Package;

7.3.2 a description of the Services performed;

7.3.3 the categories, type and quantity of any Deliverables supplied; and

7.3.4 any further information identified as being required in the corresponding Work Package

(a "**Completion Note**").

7.4 Each Work Package shall be deemed to have been completed at such time as the Council is satisfied that the Services have been performed by Hoople in full and in accordance with the terms of this Agreement and the terms of the corresponding Work Package ("**Completion**").

7.5 Time of performance shall be of the essence. [Subject to the provisions of clause 7.6,] If in relation to a Work Package, Hoople fails to comply with the provisions of clause 7.2, then the Council may:

7.5.1 refuse to accept any subsequent attempts to perform the Work Package or the relevant part of the Work Package and terminate the Work Package immediately by written notice to Hoople;

7.5.2 procure services similar to the Services identified in the Work Package from an alternative supplier; and

7.5.3 recover from Hoople all losses, damages, costs and expenses incurred by the Council arising from Hoople's default].

7.6 Hoople shall not be liable for any failure to comply with the provisions of clause 7.2 to the extent such failure is caused by:

7.6.1 the Council's failure to make the Performance Location available; or

7.6.2 an event of Force Majeure.

8. CONTRACT MANAGEMENT AND REPORTING

8.1 Each party shall appoint a Contract Manager for each Work Package to act as the main point of contact for the other party in respect of all day-to-day matters relating to the supply of the Services and this Agreement.

8.2 The parties shall ensure that the Contract Managers meet at monthly or at some such frequency as set out in the relevant Work Package intervals to discuss the progress being made in relation to the provision of the Services and any disagreements which may arise.

8.3 Hoople shall ensure that its Contract Manager also provides a status report for submission to the Council on a quarterly basis detailing [describe the required contents of the status report].

9. **CHANGE CONTROL PROCEDURE**

9.1 Where the Council or Hoople sees a need to change this Agreement (or any of the provisions in it, including the Services or the Work Packages), whether in order to include an additional service, function or responsibility to be performed by Hoople for the Council under this Agreement, to amend the Services or the service levels attached to the Services or otherwise in a Work Package, the Council may at any time request, and Hoople may at any time recommend, such Change and a Change Request shall be submitted by the party requesting/recommending (as applicable) the Change to the other. Such Change shall be agreed by the parties only once the Change Request is signed by both parties.

9.2 Each Change Request shall conform to the requirements of Schedule 8.

9.3 Until such Change is made in accordance with clause 9.1, the Council and Hoople shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms prior to such Change.

9.4 Any discussions which may take place between the Council and Hoople in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.

9.5 Any Services or other work performed by Hoople and/or Hoople Personnel to the Council which have not been agreed in accordance with the provisions of this clause 9 shall be undertaken entirely at the expense and liability of Hoople.

10. **WARRANTY**

10.1 Hoople represents and warrants that:

10.1.1 it has the right, power and authority to enter into this Agreement and grant to the Council the rights (if any) contemplated in this Agreement and to perform the Services;

10.1.2 it understands the Council's business and needs;

10.1.3 the Services shall be performed in accordance with Good Industry Practice;

10.1.4 the Services performed and the Deliverables supplied shall comply with all applicable Laws;

10.1.5 the Services performed and Deliverables supplied shall conform in all material respects to the corresponding Work Package and Specification;

10.1.6 the Services performed and Deliverables supplied shall not infringe the Intellectual Property Rights of any third party; and

10.1.7 the Deliverables shall be free from defects in material and workmanship and of satisfactory quality within the meaning of the Sale of Goods Act 1979, s 14.

10.2 Without limiting any other remedies to which it may be entitled, the Council may reject any Services or Deliverables that do not comply with clause 10.1 and Hoople shall, at the Council's option, promptly remedy, re-perform or refund the Price of any such Services or Deliverables .

10.3 The provisions of this Agreement and the corresponding Work Package shall apply to any Services and related Deliverables that are remedied, re-performed or redelivered pursuant to clause 10.2.

10.4 Hoople shall not be liable for a breach of clause 10.1 to the extent that such breach arises by reason of:

10.4.1 the Council's wilful damage or negligence; or

10.4.2 an event of Force Majeure.

11. **PRICE**

11.1 The Prices payable by the Council in respect of each Work Package for Services are contained in the relevant Work Package.

11.2 The Prices are inclusive of:

11.2.1 [insert details, e.g. associated deliverables, travel, insurance costs]; and

11.2.2 VAT [as may be applicable].

11.3 Where the Prices are calculable on a time and materials basis, Hoople will keep time sheets showing the hours worked by each of the Hoople Personnel in respect of the provision of the corresponding Services and will if so requested produce them to the Council for accounting purposes.

11.4 Hoople will be responsible for all out-of-pocket expenses incurred by it and Hoople Personnel in the performance of its obligations under this Agreement and under the Work Packages. For the avoidance of doubt Hoople will not be reimbursed separately for these expenses.

11.5 [Hoople may increase the Prices at any time after the first anniversary of the Commencement Date by giving the Council not less than [20] Business Days' notice in writing provided that:

11.5.1 [the number of Price increases per Contract Year does not exceed [one];]

11.5.2 [the increase does not exceed [insert percentage] of the Prices in effect immediately prior to the increase; and]

11.5.3 [the increase shall not affect any existing Work Packages in force at the time of the increase.]]

12. **PAYMENT AND INVOICING**

12.1 Hoople shall issue its invoice in respect of a Work Package as described in Schedule 4 and the relevant Work Package.

12.2 The Council shall pay all undisputed invoices:

12.2.1 in full in cleared funds within 30 days of receipt of each invoice; and

12.2.2 to the bank account nominated by Hoople.

12.3 The Council shall pay any applicable VAT (or equivalent sales tax) to Hoople on receipt of a valid VAT invoice.

12.4 Time of payment is not of the essence. Where sums due are not paid in full by the due date:

12.4.1 Hoople may charge interest on such sums at two percentage points a year above the base rate of the Bank of England from time to time in force; and

12.4.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

13. DATA PROTECTION

13.1 Each party agrees that, in the performance of their respective obligations under this Agreement, it shall comply with the provisions of Schedule 6.

14. INSURANCE

14.1 Hoople shall put in place and maintain the following insurance with a reputable insurer for the duration of this Agreement and for one year after its termination or expiry:

14.1.1 public liability insurance for not less than £5,000,000 in respect of each claim; and

14.1.2 professional indemnity insurance for not less than £5,000,000 in respect of each claim.

14.2 Hoople shall procure that the Council's interest is noted on each policy of insurance.

14.3 On each policy renewal (including where any modifications are made to any policy) and otherwise at the Council's request, Hoople shall provide the Council with details of the insurance including the risks covered, indemnity limits and premiums paid and copies of the certificates of insurance.

14.4 Hoople undertakes that it shall not do or omit to do anything which might invalidate or adversely affect the insurance that Hoople is obliged to maintain under clause 14.1.

14.5 Hoople shall notify the Council immediately if anything occurs which has invalidated, or is likely to invalidate, the insurance held by Hoople.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 In consideration of the Prices payable under this Agreement (the receipt and sufficiency of which Hoople hereby acknowledges) and the parties' mutual obligations under this Agreement Hoople assigns to the Council absolutely with full title guarantee Hoople's future Intellectual Property Rights in the Services and Deliverables and all other materials created by Hoople pursuant to this Agreement.

15.2 Except as expressly agreed above, no Intellectual Property Rights of either party are transferred or licensed as a result of this Agreement. [Hoople shall have no ongoing right to use or license or otherwise encumber or exploit the Intellectual Property Rights in the Services and the Deliverables (or permit others to do so) following receipt by it of the Prices payable under this Agreement.]

15.3 Subject to the foregoing, each party shall be entitled to use in any way it deems fit any skills, techniques or know-how acquired or developed or used in connection with [the Services or otherwise in connection with] this Agreement provided always that such skills, techniques or know-how do not infringe the other party's Intellectual Property Rights now or in the future or disclose or breach the confidentiality of the other party's Confidential Information.

16. LIMITATION OF LIABILITY

16.1 [The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 16.

16.2 Subject to clause[s 16.7 and] 16.8, the liability of Hoople shall not exceed:

16.2.1 £[insert] in respect of any one claim or series of related claims; and

16.2.2 £[insert] [in total OR under each Work Package] in respect of all claims[under the relevant Work Package].

- 16.3 Subject to clause[s 16.7 and] 16.8, the liability of the [Council] shall not exceed £[insert] in addition to its obligation to pay the [Price] (including any interest and expenses properly incurred).
- 16.4 Subject to clause[s][16.6][,][16.7][and] 16.8, neither party shall be liable for any consequential, indirect or special loss.
- 16.5 Subject to clause[s 16.6, 16.7 and] 16.8, neither party shall be liable for any of the following (whether direct or indirect):
- 16.5.1 loss of profit;
 - 16.5.2 loss of revenue;
 - 16.5.3 loss of[use of] data[that is not Protected Data (as defined in [insert reference to definition of Protected Data]);
 - 16.5.4 loss of use;
 - 16.5.5 loss of production;
 - 16.5.6 loss of contract;
 - 16.5.7 loss of commercial opportunity;
 - 16.5.8 loss of savings, discount or rebate (whether actual or anticipated);
 - 16.5.9 harm to reputation or loss of goodwill; and
 - 16.5.10 loss of business.
- 16.6 Notwithstanding clauses 16.4 and 16.5, and without limiting the Council's entitlement to recover other types of loss, the parties agree that the Council may recover the following from Hoople as direct loss:
- 16.6.1 the cost of selecting, procuring, installing and testing replacement goods or services;
 - 16.6.2 wasted expenditure or unnecessary charges incurred by the Council (including regulatory fines);
 - 16.6.3 liability to third parties (including customers);
 - 16.6.4 the cost of rectifying lost or damaged data; and
 - 16.6.5 [insert other recoverable losses].
- 16.7 The limitations of liability set out in clauses 16.2 to 16.5, and the provisions of clause 16.6, shall not apply in respect of any indemnities given by either party under this Agreement[and any amounts recovered as indemnities will be excluded in calculating total liability under clauses 16.2 and 16.3].
- 16.8 Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of the following:
- 16.8.1 death or personal injury caused by negligence;
 - 16.8.2 fraud or fraudulent misrepresentation;
 - 16.8.3 any other losses which cannot be excluded or limited by applicable Law;]

17. **INDEMNITY**

17.1 Hoople shall indemnify the Council for any losses, damages, liability, costs and expenses (including professional fees) incurred by it as a result of any action, demand or claim:

17.1.1 that the provision of the Services or Deliverables infringes the Intellectual Property Rights of any third party (an "IPR Claim");

17.1.2 that the Council is in breach of any applicable Law as a result of any act or omission of Hoople,

each being a "Claim".

17.2 In the event that the Council receives notice of any Claim, it shall:

17.2.1 notify Hoople in writing as soon as reasonably practicable;

17.2.2 not make any admission of liability or agree any settlement or compromise of the Claim without the prior written consent of Hoople (such consent not to be unreasonably withheld or delayed);

17.2.3 let Hoople at its request and own expense have the conduct of or settle all negotiations and litigation arising from the Claim at its sole discretion provided that if Hoople fails to conduct the Claim in a timely or proper manner the Council may conduct the Claim at the expense of Hoople;

17.2.4 take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the Claim; and

17.2.5 provide Hoople with all reasonable assistance in relation to the Claim (at the Council's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Council.

17.3 If any IPR Claim is made or is reasonably likely to be made, Hoople may at its option:

17.3.1 procure for the Council the right to continue receiving the relevant Services or using and possessing the relevant Deliverables; or

17.3.2 re-perform the infringing part of the Services or modify or replace the infringing part of the Deliverables so as to avoid the infringement or alleged infringement, provided the Services or Deliverables remain in conformance to the Specification.

18. **TERMINATION**

18.1 This Agreement may be terminated by the Council giving not less than twelve (12) weeks' notice in writing to Hoople[, such notice not to expire prior to the fifth anniversary of the Commencement Date].

[To consider how a Work Package could be terminated and whether part termination of the Agreement is possible]

18.2 Either party may terminate this Agreement at any time by giving notice in writing to the other party if:

18.2.1 the other party commits a material breach of this Agreement and such breach is not remediable;

18.2.2 the other party commits a material breach of this Agreement which is not remedied within sixty (60) days of receiving written notice of such breach;

- 18.2.3 any consent, licence or authorisation held by the other party is revoked or modified such that the other party is no longer able to comply with its obligations under this Agreement or receive any benefit to which it is entitled.
- 18.3 Either party may terminate this Agreement at any time by giving notice in writing to the other party if that other party:
- 18.3.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 18.3.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;
 - 18.3.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 18.3.4 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
 - 18.3.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
 - 18.3.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
 - 18.3.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 18.3.8 has a resolution passed for its winding up;
 - 18.3.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 18.3.10 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
 - 18.3.11 has a freezing order made against it;
 - 18.3.12 is subject to any events or circumstances analogous to those in clauses 18.3.1 to 18.3.12 in any jurisdiction;
 - 18.3.13 [takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 18.3.1 to 18.3.12 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.]
- 18.4 The right of a party to terminate the Agreement pursuant to clause 18.3 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to this Agreement.
- 18.5 The Council may terminate this Agreement at any time by giving not less than twelve (12) weeks' notice in writing to Hoople if Hoople undergoes a change of Control or if it is realistically anticipated that Hoople will undergo a change of Control within [two] months.
- 18.6 On termination of this Agreement for any reason:
- 18.6.1 Hoople shall immediately stop the performance of all Services unless expressly requested otherwise in relation to all or part of the Services by the Council in writing;
 - 18.6.2 Hoople shall promptly invoice the Council for all Services performed but not yet invoiced and/or refund any sums paid in advance for Services not performed;

- 18.6.3 without prejudice to any additional obligations under Schedule 6, the parties shall within five Business Days return any materials of the other party then in its possession or control;
- 18.6.4 all accrued rights and liabilities of the parties (including any rights in relation to breaches of contract) shall not be affected; and
- 18.6.5 all rights granted to Hoople under this Agreement or any Work Package shall immediately cease.

18.7 The following clauses of this Agreement shall survive termination, howsoever caused:

- 18.7.1 clause 10 (warranty);
- 18.7.2 clause 13 (data protection);
- 18.7.3 clause 14 (insurance);
- 18.7.4 clause 16 (limitation of liability);
- 18.7.5 clause 17 (indemnity);
- 18.7.6 clause 18.6 (consequence of termination);
- 18.7.7 clause 20 (personnel);
- 18.7.8 clause 21 (non-solicitation);
- 18.7.9 clause 23 (confidential information);
- 18.7.10 clause 28 (audits and investigations);
- 18.7.11 clause 29 (dispute resolution);
- 18.7.12 clause 32 (notices);
- 18.7.13 clause 45 (third party rights);
- 18.7.14 clauses 47 and 48 (governing law and jurisdiction); and
- 18.7.15 Schedule 6 (data protection)

together with any other provision of this Agreement which expressly or by implication is intended to survive termination.

19. EXIT

19.1 [Clause to be included]

20. PERSONNEL [TO EXPAND FURTHER]

Transfer of Employees

20.1 The parties shall comply with the terms of Schedule 7.

General

20.2 Hoople shall be liable for paying all Employment Costs associated with the employment of the Hoople Personnel and shall be responsible for making all deductions required by Law.

- 20.3 Should any such Hoople Personnel seek to recover any Employment Costs from the Council or otherwise claim any Employment Liabilities from the Council, Hoople shall indemnify the Council without limit in relation to the same.
- 20.4 Hoople shall ensure that all Hoople Personnel comply with:
- 20.4.1 any protocols, codes of conduct or procedures agreed between the parties to be applicable which may include the Policies and any occupational health and health and safety requirements, building access and physical security policies, employee conduct requirements and environmental policies which are notified to Hoople by the Council from time to time in writing; and
- 20.4.2 Hoople's obligations under this Agreement.
- 20.5 To the extent legally permissible, Hoople shall not employ as Hoople Personnel individuals whose previous background would reflect adversely upon the Council (including those individuals convicted of serious criminal offences) and Hoople shall carry out such checks as are legally permissible to guard against this.
- 20.6 Hoople shall use best endeavours to minimise disruption occasioned by any turnover of Hoople Personnel.
- 20.7 Hoople shall comply with all Laws applicable to the employment or retention of Hoople Personnel, including work permits, immigration, customs, foreign payment or similar requirements and shall indemnify the Council without limit against any losses, damages, liability, costs and expenses (including professional fees) arising out of Hoople's failure to comply with this clause 20.7.
- 20.8 The Council reserves the right to demand the replacement at any time, without notice, of any Hoople Personnel if, in the reasonable opinion of the Council, the performance or conduct of such Hoople Personnel is or has been unsatisfactory or if a regulatory body requires the Council to do so, in which case Hoople shall promptly remove the relevant Hoople Personnel from the provision of Services and, where required, promptly provide replacement Hoople Personnel. The Council shall provide such details as it is reasonably able to provide as to the basis for any required removal of Hoople Personnel. The Council shall not be charged for any training or other costs incurred due to the change.

Authorisation of Hoople Personnel/Security Requirements

- 20.9 All Hoople Personnel whom Hoople proposes to carry out work or perform duties under this Agreement and who shall be required, whilst carrying out some or all of that work or performing some or all of those duties, to:
- 20.9.1 enter [secure areas in] the Performance Location;
- 20.9.2 work with the Council's personnel for extended periods; or
- 20.9.3 hold a particular kind of security clearance where details of such additional requirements have been notified to Hoople by the Council;
- must be authorised by the Council to carry out that work or perform those duties, such authorisation by the Council to be in compliance with the Council's security policies from time to time in force and notified to Hoople in writing.
- 20.10 Subject to any duties of confidence, the Council shall provide to Hoople, in the form reasonably required by Hoople, such information as Hoople reasonably requests, from time to time, for the purpose of allowing Hoople to comply with any security requirements for the purposes of clause 20.9.

21. **NON-SOLICITATION [TO CONSIDER IF REQUIRED]**

22. **SUB-CONTRACTING**

22.1 Hoople must exercise due skill and care when it selects and appoints Sub-contractors to ensure that Hoople is able to:

22.1.1 manage Sub-contractors in accordance with Good Industry Practice;

22.1.2 comply with its obligations under this Agreement; and

22.1.3 assign, novate or transfer its rights and/or obligations under the Sub-Contract that relate exclusively to this Agreement to the Council or a Successor Supplier.

22.2 Hoople shall ensure that, unless agreed otherwise in writing by the Council, all Sub-Contracts in Hoople's supply chain entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement contain provisions that:

22.2.1 embody the principles of supply chain management set out in the Council's Policies;

22.2.2 state that Hoople and its Sub-Contractor shall act in a spirit of mutual trust and co-operation;

22.2.3 require the Sub-Contractor work with Hoople in seeking continual improvement in the delivery of the Services;

22.2.4 require the Sub-Contractor (at the Council's option) to assist and co-operate in responding to any Requests for Information;

22.2.5 allow Hoople to terminate the Sub-Contract if the Sub-contractor fails to comply with its obligations under this Agreement and/or in respect of environmental, social, equality or employment Law;

22.2.6 allow Hoople (at the Council's option) to novate the Sub-Contract to the Council or a Successor Supplier following the termination of this Agreement;

22.2.7 require Hoople to pay all Sub-Contractors in full, within 30 days of receiving a valid, undisputed invoice; and

22.2.8 allow the Council to publish the details of the late payment or non-payment if this 30-day limit is exceeded.

22.3 At the Council's request, Hoople shall, at no cost to the Council, terminate or (where applicable) remove the corresponding Sub-Contract in any of the following events:

22.3.1 there is a Change of Control of a Sub-Contractor which are not pre-approved by the Council in writing;

22.3.2 the acts or omissions of the Sub-Contractor have caused or materially contributed to a right of termination under clause 18; and/or

22.3.3 a Sub-Contractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Council;

22.4 If the Council can get more favourable commercial terms for the supply at cost of any materials, goods or services used by Hoople to provide the Deliverables and that cost is reimbursable by the Council, then the Council may require Hoople to replace its existing commercial terms with the more favourable terms offered for the relevant items.

22.5 If the Council uses clause 22.4 then the Price must be reduced by an agreed amount by using the Change Control Procedure.

22.6 Hoople is responsible for all acts and omissions of its Sub-Contractors and those employed or engaged by them as if they were its own.

23. **CONFIDENTIAL INFORMATION**

23.1 Each party undertakes that it shall keep any information that is confidential in nature concerning the other party and its Affiliates including, any details of its business, affairs, customers, clients, suppliers, plans or strategy ("**Confidential Information**") confidential and that it shall not use or disclose the other party's Confidential Information to any person, except as permitted by clause 23.2.

23.2 Subject to clause 23.5, a party may:

23.2.1 disclose any Confidential Information to any of its employees, officers, representatives or advisers ("**Representatives**") who need to know the relevant Confidential Information for the purposes of the performance of any obligations under this Agreement, provided that such party must ensure that each of its Representatives to whom Confidential Information is disclosed is aware of its confidential nature and agrees to comply with this clause 23 as if it were a party;

23.2.2 disclose any Confidential Information as may be required by law, any court, any governmental, regulatory or supervisory authority (including any securities exchange) or any other authority of competent jurisdiction to be disclosed; and

23.2.3 use Confidential Information only to perform any obligations under this Agreement.

23.3 Each party recognises that any breach or threatened breach of this clause 23 may cause irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages, the parties agree that the non-defaulting party may be entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

23.4 This clause 23 shall bind the parties during the Term.

23.5 To the extent any Confidential Information is [insert relevant term for personal data as defined in this agreement eg Personal Data or Protected Data as defined in Schedule 6] such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any of Schedule 6.

24. **FREEDOM OF INFORMATION**

24.1 Hoople acknowledges that the Council is subject to the requirements of the FOIA and the EIRs and shall promptly and fully assist and cooperate with the Council to enable the Council to comply with its obligations in respect of those requirements.

24.2 Where Hoople receives a Request for Information it shall:

24.2.1 inform the Council of its receipt as soon as reasonably practicable, and in any event no later than 2 Business Days of its receipt; and

24.2.2 provide a copy of the Request for Information to the Council, together with all other information as Hoople considers reasonably relevant to the request within 2 Business Days of receipt of the Request for Information by Hoople.

24.3 Hoople shall not respond directly to a Request for Information unless expressly authorised to do so by the Council in writing.

24.4 While the Council may, if practicable and appropriate, consult with Hoople in relation to whether any information relating to Hoople or this Agreement should be disclosed as part of a response to a Request for Information, the Council shall ultimately be responsible for determining in its absolute discretion whether any Information or Environmental Information will be disclosed and whether any exemptions apply.

25. COMPLIANCE

Anti-discrimination and Human Rights

25.1 Hoople shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

25.1.1 all applicable Equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

25.1.2 the Council's equality and diversity policies or procedures provided to Hoople (as updated and provided to Hoople from time to time); and

25.1.3 any other requirements and instructions that the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under the applicable Equality Law.

25.2 In addition to clause 0, Hoople shall take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

25.3 Hoople shall, and shall use reasonable endeavours to procure that its staff, agents and Sub-Contractors shall at all times comply with the provisions and the requirements of the Human Rights Act 1998 during the term of this Agreement.

25.4 Hoople shall provide such evidence as the Council may reasonably require so as to enable the Council to be satisfied that Hoople is complying with its obligations under clause 25.3.

Employment Law

25.5 Hoople must perform its obligations meeting the requirements of all applicable Law regarding employment.

Health and Safety

25.6 Hoople shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

25.6.1 all applicable Law regarding health and safety; and

25.6.2 the Council's policy regarding health and safety whilst at the Council's premises.

25.7 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Council's premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. Hoople shall instruct the Hoople Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Conflicts of Interest

25.8 Hoople:

25.8.1 must take action to ensure that neither Hoople nor the Hoople Personnel are placed in the position of an actual, potential or perceived Conflict of Interest;

25.8.2 must promptly notify and provide details to the Council if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

25.9 The Council will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Council, such measures do not or will not resolve an actual or potential Conflict of Interest, the Council may terminate this Agreement immediately by giving notice in writing to Hoople where there is or may be an actual or potential Conflict of Interest.

25.10 Hoople shall immediately notify the Council if it becomes aware of any breach of this clause 25.

25.11 A breach of this clause 25 shall be considered a material breach for the purposes of clause 18.2.

26. **ANTI-BRIBERY**

26.1 Hoople shall not during the term of this Agreement:

26.1.1 commit a Prohibited Act;

26.1.2 do or allow anything which would cause the Council, including any of their employees, consultants, contractors, sub-contractors or agents to breach any of the Relevant Requirements or incur any liability under them.

26.2 Hoople shall during the term of this Agreement:

26.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;

26.2.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of Hoople do not commit tax evasion facilitation offences as defined under that Act;

26.2.3 keep full records to show it has complied with its obligations under this clause 24 and give copies to the Council on request; and

26.2.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

26.3 Hoople shall immediately notify the Council in writing if it becomes aware of any breach of clauses 26.1 or 26.2, or has any reason to think that it, or any of the Hoople Personnel, have either:

26.3.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

26.3.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

26.3.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

26.4 If Hoople is in Default under clauses 26.1 or 26.2, the Council may by notice:

26.4.1 require Hoople to remove from performance of this Agreement any Hoople Personnel whose acts or omissions have caused the Default; and

26.4.2 immediately terminate this Agreement.

26.5 Any notice served by the Council under clause 26.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Agreement shall terminate).

27. **MODERN SLAVERY**

27.1 Hoople undertakes, warrants and represents that:

27.1.1 neither Hoople nor any of its officers, employees, agents or Sub-Contractors has:

- (a) committed an offence under the Modern Slavery Act 2015 (an "**MSA Offence**"); or
- (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

27.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;

27.1.3 its responses, if requested, to the Council's modern slavery and human trafficking due diligence questionnaire are complete and accurate; and

27.1.4 it shall notify the Council immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or Sub-Contractors have breached or potentially breached any of Hoople's obligations under clause 27. Such notice to set out full details of the circumstances concerning the breach or potential breach of Hoople's obligations.

27.2 Any breach of clause 27.1 by Hoople shall be deemed a material breach of this Agreement and shall entitle the Council to immediately terminate this Agreement by notice under clause 18.2.1.

28. **AUDITS AND INVESTIGATIONS**

28.1 Hoople shall allow the Council and/or its agents to access, inspect and audit Hoople's records, accounts and other relevant information and premises (including allowing copying of documents):

28.1.1 during normal business hours on Business Days and subject to a minimum of five Business Days' notice; and

28.1.2 not more often than two times in any [rolling 12-month] period;

to the extent this is reasonably required for the purpose of verifying Hoople's compliance with its obligations under this Agreement. Where such access, inspection or audit is required by an official government regulator, Hoople shall allow such inspection or audit at any time and there shall be not be a limit to the number of such inspections or audits that can be undertaken.

28.2 The Council shall pay the auditor's reasonable costs and otherwise bear its own costs in connection with the audit or inspection, unless the records show that the Council has been overcharged by [two] percentage points or more or Hoople is in material breach of this Agreement, in which case Hoople shall pay:

28.2.1 the costs of the auditor and the Council's other reasonable costs in connection with the audit or inspection; and

28.2.2 any amount by which the Council has been overcharged and applicable interest calculated in accordance with this Agreement within 10 days of the Council's written request.

28.3 When conducting audits, the Council shall comply with Hoople's reasonable directions in order to minimise disruption to Hoople's business and to safeguard the confidentiality of Hoople's other Confidential Information and that of Hoople's other customers.

28.4 The audit rights under this clause 28 are in addition, and without prejudice, to the further audit or inspection obligations of Hoople or rights of the Council under Schedule 6 and each may be exercised separately.

29. **DISPUTE RESOLUTION**

29.1 Any dispute arising between the parties out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this clause 29.

29.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

29.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:

29.3.1 within ten Business Days of service of the notice, the contract managers of the parties shall meet to discuss the dispute and attempt to resolve it; and

29.3.2 if the dispute has not been resolved within five Business Days of the first meeting of the contract managers, then the matter shall be referred to the chief executives/chief operating officers] (or persons of equivalent seniority). The chief executives/chief operating officers (or equivalent) shall meet within five Business Days to discuss the dispute and attempt to resolve it.

29.4 The specific format for the resolution of the dispute under clause 29.3.1 and, if necessary, clause 29.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.

29.5 If the dispute chief executives/chief operating officers has not been resolved within 10 Business Days days of the first meeting of the chief executives/chief operating officers (or equivalent) under clause 29.3.2 then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.

29.6 Until the parties have completed the steps referred to in clauses 29.3 and 29.5, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.

30. **FORCE MAJEURE**

30.1 In this clause 30, "**Force Majeure** means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under this Agreement".

30.2 A party shall not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it:

30.2.1 promptly notifies the other of the Force Majeure event and its expected duration; and

30.2.2 uses reasonable endeavours to minimise the effects of that event.

30.3 If, due to Force Majeure, a party:

30.3.1 is[or is likely to be] unable to perform a material obligation; or

30.3.2 is or is likely to be delayed in or prevented from performing its obligations for a total in any 12 months of operation of this Agreement of more than 120 Business Days,

the other party may terminate this Agreement on not less than four weeks' written notice.

31. ENTIRE AGREEMENT

31.1 The parties agree that this Agreement and the Work Packages entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

31.2 Each party acknowledges that it has not entered into this Agreement and the Work Packages entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement and the Work Packages entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.

31.3 Nothing in this Agreement purports to limit or exclude any liability for fraud.

32. NOTICES

32.1 Any notice given by a party under this Agreement shall:

32.1.1 be in writing and in English;

32.1.2 be signed by, or on behalf of, the party giving it; and

32.1.3 be sent to the relevant party at the address set out in clause 32.2.3.

32.2 Notices may be given, and are deemed received:

32.2.1 by hand: on receipt of a signature at the time of delivery;

32.2.2 by 'Royal Mail Recorded Signed For' post: at 9.00 am on the second Business Day after posting;

32.2.3 by email: at the time the transmission is received, provided that any email sent after 1700hrs on any Business Day shall be deemed to have been received at 0900 hrs on the following Business Day. Notices shall be sent to:

32.2.4 **Hoople Limited** [for the attention of [insert name and/or position]] at:

[insert address]

[[insert email address]; and]

[copied to [insert name] at [insert address]; and]

32.2.5 **The County of Herefordshire District Council** [for the attention of [insert name and/or position]] at:

[insert address]

[[insert email address]]]; and OR .]

[copied to [insert name] at [insert address].]

32.3 Any change to the contact details of a party as set out in clause 32.2.3 shall be notified to the other party in accordance with clause 32.2.3 and shall be effective:

- 32.3.1 on the date specified in the notice as being the date of such change; or
- 32.3.2 if no date is so specified, five Business Days after the notice is deemed to be received.

32.4 All references to time are to the local time at the place of deemed receipt.

32.5 This clause does not apply to notices given in legal proceedings or in any arbitration.

33. **ANNOUNCEMENTS**

33.1 Subject to clause 33.2, no announcement or other public disclosure concerning this Agreement or any of the matters contained in it shall be made by, or on behalf of, a party without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). The parties shall consult on the form and content of any such announcement or other public disclosure, as well as the manner of its release.

33.2 If a party is required to make an announcement or other public disclosure concerning this Agreement or any of the matters contained in it by law, any court, any governmental, regulatory or supervisory authority (including any recognised investment exchange) or any other authority of competent jurisdiction, it may do so. Such a party shall:

- 33.2.1 notify the other party as soon as is reasonably practicable upon becoming aware of such requirement to the extent it is permitted to do so by law, by the court or by the authority requiring the relevant announcement or public disclosure;

- 33.2.2 make the relevant announcement or public disclosure after consultation with the other party so far as is reasonably practicable; and

- 33.2.3 make the relevant announcement or public disclosure after taking into account all reasonable requirements of the other party as to its form and content and the manner of its release, so far as is reasonably practicable.

34. **FURTHER ASSURANCE**

Hoople shall at the request of the Council, and at the cost of Hoople, do all acts and execute all documents which are necessary to give full effect to this Agreement.

35. **VARIATION**

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.

36. **ASSIGNMENT**

36.1 Hoople may not assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the Council's prior written consent (such consent not to be unreasonably withheld or delayed).

36.2 Notwithstanding clause 36.1, Hoople may perform any of its obligations and exercise any of its rights granted under this Agreement through any Affiliate, provided that it gives the Council prior written notice including the identity of the relevant Affiliate. Hoople acknowledges and agrees that any act or omission of its Affiliate in relation to its rights or obligations under this Agreement shall be deemed to be an act or omission of Hoople itself.

37. **SET OFF**

[Except as expressly set out in this Agreement, each OR Each] party shall pay all sums that it owes to the other party under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by Law.

38. **NO PARTNERSHIP OR AGENCY**

The parties are independent [businesses OR persons] and are not partners, principal and agent or employer and employee and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

39. **EQUITABLE RELIEF**

Each party recognises that any breach or threatened breach of this Agreement may cause the other party irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the other party, each party acknowledges and agrees that the other party is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

40. **SEVERANCE**

40.1 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

40.2 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

41. **WAIVER**

41.1 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

41.2 No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

41.3 A waiver of any term, provision, condition or breach of this Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.

42. **CONFLICTS WITHIN AGREEMENT**

42.1 In the event of any conflict or inconsistency between different parts of this Agreement, the following descending order of priority applies:

42.1.1 the terms and conditions in the main body of this Agreement and Schedule 6;

42.1.2 the other Schedules;

42.1.3 the Work Package.

42.2 Subject to the above order of priority between documents, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.

43. **COUNTERPARTS**

43.1 This Agreement may be signed in any number of separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement.

43.2 Each party may evidence their signature of this Agreement by transmitting by email a signed signature page of this Agreement in PDF format together with the final version of this Agreement in PDF or Word format, which shall constitute an original signed counterpart of this Agreement. Each party adopting this method of signing shall, following circulation by email, provide the original, hard copy signed signature page to the other parties as soon as reasonably practicable.

44. **COSTS AND EXPENSES**

Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).

45. **THIRD PARTY RIGHTS**

45.1 Except as expressly provided for in clause 46, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.

46. **DISPUTES**

46.1 [Detail to be inserted]

47. **GOVERNING LAW**

This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England.

48. **JURISDICTION**

Subject to clause 46, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

AGREED by the parties on the date set out at the head of this Agreement.

Signed by [insert full name of director/authorised signatory]
for and on behalf of	[Director OR Authorised signatory]
[Hoople Limited]	

EXECUTED as a deed by affixing the Common Seal of The County of Herefordshire District Council in the presence of:

.....

Name:

Position

SCHEDULE 1

DEFINITIONS

"Affiliate"	means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with, another entity;
"Agreement"	means this agreement together with all its Schedules and Annexes including the Work Packages;
"Associated Person"	has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;
"Bribery Laws"	means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable United Kingdom laws, legislation, statutory instruments and regulations in relation to bribery or corruption;
"Business Day"	means a day other than a Saturday, Sunday or bank or public holiday in England;
"Change"	means any change to this Agreement including to any of the Services or to any of the Work Packages;
"Change Control Procedure"	means the process by which any Change is agreed as set out in clause 9;
"Change Request"	means a request submitted by a party to effect a Change, in the form of the template at Schedule 8;
"Claim"	has the meaning given in clause 17.1;
"Commencement Date"	means [the date of this Agreement OR [insert date]];
"Completion"	shall, in relation to each Work Package, have the meaning given to it in clause 7.4, and " Completed " and similar expressions shall be construed accordingly;
"Completion Note"	shall, in relation to each Work Package, have the meaning given to it in clause 7.3;
"Confidential Information"	has the meaning given in clause 23.1;
"Conflict of Interest"	means a conflict between the financial or personal duties of Hoople or the Hoople Personnel and the duties owed to the Council under the Agreement, in the reasonable opinion of the Council;
"Contract Manager"	is the person appointed by each party to represent it in relation to day to day matters arising in relation to the Services and this Agreement;
"Contract Year"	means each consecutive period of 12 months commencing from the Commencement Date;
"Control"	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and " Controls " and " Controlled " shall be interpreted accordingly;

"Council Materials"	means any material owned by the Council or its Affiliates relating to the Services (and any modifications to that material);
"Deliverables"	means the goods ancillary to the supply of the Services, to be supplied by Hoople to the Council;
"EIRs"	means the Environmental Information Regulations 2004;
"Employee"	means any employee (as defined in the TUPE Regulations) of the Council who is assigned to providing services akin to the Services;
"Environmental Information"	shall have the meaning given to it as set out in the EIRs;
"Employee Liability Information"	means the information required pursuant to Regulation 11 of the TUPE Regulations;
"Employment Costs"	means all pay, benefits, PAYE payments, national insurance contributions, pension contributions and other amounts payable to or in respect of the employment or engagement of any person;
"Employment Liabilities"	means all liabilities including, but not limited to, claims for redundancy payments, unlawful deductions from wages, unfair, wrongful or constructive dismissal compensation, compensation for age, sex, race or disability discrimination or discrimination on the grounds of religion, belief, age or sexual orientation or claims for equal pay, compensation for less favourable treatment of part-time workers, and any other claims whether in tort (including negligence), contract or statute or otherwise, and any demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation, and any expenses and legal costs on an indemnity basis;
"Equality Law"	means the Equality Act 2010, any statutory code issued under it and any supplements to it as well as associated guidance published by the Equality and Human Rights Commission and all other applicable UK legislation, statutory instruments and regulations in relation to equality and diversity;
"FOIA"	means the Freedom of Information Act 2000;
"Force Majeure"	has the meaning given in clause 30.1;
"Good Industry Practice"	means in relation to any undertaking and any circumstances, the highest degree of professionalism, skill, diligence, prudence and foresight which would be expected from an internationally recognised and market leading company engaged in the same type of activity under the same or similar circumstances and which is best in class;
"Information"	shall have the meaning given to it as set out in the FOIA;
"Intellectual Property Rights"	means copyright, patents, rights in inventions, rights in confidential information, Know-how, trade secrets, trade marks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, semi-conductor chip topography rights, mask works, utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including

all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing;

"IPR Claim"	has the meaning given in clause 17.1.1;
"Know-how"	means inventions, discoveries, improvements, processes, formulae, techniques, specifications, technical information, methods, tests, reports, component lists, manuals, instructions, drawings and information relating to customers and suppliers (whether written or in any other form and whether confidential or not);
"Law"	means: <ul style="list-style-type: none">(a) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of;(b) the common law and laws of equity as applicable to the parties from time to time;(c) any binding court order, judgment or decree;(d) any applicable industry code, policy or standard; or(e) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;
"Milestone"	means an activity, process or outcome described in a Work Package relating to the Services to be provided under that Work Package;
"Milestone Date"	means the date set out in the Work Package by which the Milestone must have been achieved by Hoople;
"Modern Slavery Policy"	means the Council's anti-slavery and human trafficking policy in force[and notified to Hoople] from time to time;
"MSA Offence"	has the meaning given in clause 27.1.1;
"Performance Location"	means the location set out in a Work Package at which the Services shall be performed;
"Policies"	means the policies of the Council as the same may be updated from time to time by the Council [including those detailed in Schedule 5];
"Price"	means the prices payable for the Services as set out in 0 or as set out in the relevant Work Package;
"Prohibited Act"	means: <ul style="list-style-type: none">(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council or any other public body 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 or 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) any offence:
	(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
	(ii) under legislation or common law concerning fraudulent acts; or
	(iii) defrauding, attempting to defraud or conspiring to defraud the Council (including offences by Hoople under Part 3 of the Criminal Finances Act 2017); or
	(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
"Recontracting Information"	has the meaning set out in paragraph 6.1.2 of Schedule 7;
"Request for Information"	shall have the meaning given to it as set out in the FOIA;
"Restricted Period"	means the Term[and a period of <i>[insert period, eg six months];</i>]
"Restricted Person"	means[any person employed or engaged by the Council at any time during the Term in a <i>[enter details of relevant roles, eg senior sales, marketing, or operational roles]</i> who has or had material contact or dealings with Hoople and] any person employed or engaged by the Council at any time during the Term in relation to the provision or receipt of the Services who has or had material contact or dealings with Hoople;
"Services"	means the services to be provided by Hoople to the Council under this Agreement including those described in (i) Schedule 1 and (ii) the Work Packages, together with the corresponding Deliverables (where the context permits);
"Services Commencement Date"	means the first date on which Hoople provides the Services to the Council;
"Services Termination Date"	means the final date on which Hoople provides the Services to the Council;
"Specification"	means the description of the Services set out in Schedule 2;
"Statement of Work"	means the detailed activities, timetable, dependencies and sequence of events which Hoople shall perform, or procure the performance of, when delivering the Services agreed between the parties pursuant to clause 6.4 and forming part of a Work Package;

"Sub-Contractor"	any person other than Hoople, who is a party to a Sub-Contract and the servants or agents of that person;
"Sub-Contract"	means any contract or agreement (or proposed contract or agreement), other than the Agreement, pursuant to which a third party: <ul style="list-style-type: none"> (a) provides the Services and/or Deliverables (or any part of them); (b) provides facilities or services necessary for the provision of the Services and/or Deliverables (or any part of them); and/or (c) is responsible for the management, direction or control of the provision of the Services and/or Deliverables (or any part of them);
"Successor Supplier"	means any person taking responsibility for the provision of the Services following termination of this Agreement;
"Hoople Personnel"	means all employees, officers, staff, other workers, agents and consultants of Hoople, its Affiliates and any of their Sub-Contractors who are engaged in the performance of the Services from time to time;
"Term"	has the meaning set out in clause 3.1;
"Termination Assistance"	means all necessary assistance (which shall include knowledge transfer), as may be reasonably required by the Council to complete the transition of all or part of the Services from Hoople to a third party designated by the Council or to the Council at the Council's election and request;
"TULR(C)A 1992"	means the Trade Union and Labour Relations (Consolidation) Act 1992;
"TUPE Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
"VAT"	means value added tax, as defined by the Value Added Tax Act 1994;
"Work Package"	means an agreed order for Services following a request from the Council as described further in clause 6.3.

SCHEDULE 2

SERVICES

[We have included the description of services provided in the current SLA as a high level outline. We anticipate that each "Service" will have its own Work Package, completed using the template in Schedule 4 as the starting point and developed to capture the information from the SLA. To discuss approach with the Council.]

Service	Service Description
IT Services	<p>All IT services to be provided by Hoople shall be provided in accordance with the Council's Digital Strategy (available at https://www.herefordshire.gov.uk/directory-record/5607/digital_strategy).</p> <p>Hoople shall but provide the following IT services to the Council (without limitation):-</p> <ul style="list-style-type: none">(a) Local Area Network including Wi-Fi;(b) Wider Area Network;(c) Internet Access and website;(d) File and Print;(e) Email;(f) Storage;(g) Maintained Applications;(h) Database Services;(i) Helpdesk / Incident Management;(j) Out of hours support;(k) Disaster Recovery and Business Continuity in relation to Council recovery;(l) IT Information Governance;(m) Cyber Security Services;

Service	Service Description
	<ul style="list-style-type: none"> (n) Device management (i.e. Laptops, Desktops, Servers, Network infrastructure); (o) Mobile device management; and (p) ICT contract management.
Finance	<p>Hoople shall provide a full range of tailored and value add accounting and financial services, including but not limited to:-</p> <ul style="list-style-type: none"> (a) Financial Accounting; (b) Management Accounting; (c) Creditors; (d) Direct Payments; and (e) Deputy and Appointee Service.
Revenues and Benefits	<p>Hoople shall provide services for the efficient management of the Council's revenue and benefit service, including services regarding the following:-</p> <ul style="list-style-type: none"> (a) Council Tax; (b) Council Tax Support; (c) Business Rates; (d) Housing and Council Tax Benefit including Free School Meals; (e) Sundry Debtors and Parking Penalty Enforcement; (f) Adult Social Care debt recovery; (g) Revenues and Benefits software and Systems; and (h) General Service requirements.

Service	Service Description
Human Resources	<p>Hoople shall provide HR services including but not limited to:-</p> <ul style="list-style-type: none"> (a) Completion of all transactional processes for payroll, recruitment and Disclosure Barring Service (DBS); (b) Update of HR information, which cannot (currently) be done electronically by managers; (c) Expert advice; (d) Recruitment services; (e) Schools statutory services; (f) Casework and case management; (g) Consultancy; and (h) HR transactional process and data management and reporting.
Training and Education	<p>Hoople shall support the management, maintenance and reporting of the e-learning management system, including:-</p> <ul style="list-style-type: none"> (a) User support; (b) Development of the learning management system functionality and content; (c) Support placements of social work students; and (d) Management of the Council's Digital Apprenticeship Account.
Care Services	<p>Hoople shall provide the following:-</p> <ul style="list-style-type: none"> (a) Homefirst Reablement services to the community; (b) Employing staff for Hillside Care; (c) residential and respite services based at Southbank Hereford and Ridgemoor in Leominster; and

Service	Service Description
	(d) Employment of two staff as independent trusted assessors to facilitate smoother discharges from hospital, which will then be used by the Council's health and social care partners to facilitate future care plans.
Building Services	<p>Hoople shall provide support regarding the following building services of the Council:-</p> <ul style="list-style-type: none"> (a) Building maintenance; (b) Soft services for Herefordshire council properties; (c) Public rights of way; and (d) Maylord Orchards shopping centre daily management and debtor's service.

SCHEDULE 3

PRICES

[To consider information on pricing and payment to include here]

[Insert price list]

SCHEDULE 4
TEMPLATE WORK PACKAGE

Work Package date:

Work Package reference:

Services

Services Commencement Date:	
Council Contract Manager:	
Hoople Contract Manager:	
Performance Location:	
Deliverables:	
Milestones and Milestone Dates:	
Charges	
Special Instructions <i>(for example if any additional standards or accreditations are required to carry out the work):</i>	

Service	Service Description	Price

<p>Statement of Work:</p> <p><i>[Availability of Service - To cover operating of hours, out of hours critical services, excluded periods of availability, etc (where applicable).]</i></p> <p><i>[Maintenance and Critical Assistance - to cover service desk availability, incident management, maintenance of core systems, etc. (where applicable).]</i></p> <p><i>[Joint Responsibilities / Council Responsibilities - to cover any obligations or responsibilities imposed on the Council solely or jointly.]</i></p> <p><i>[Governance and Reporting]</i></p> <p><i>[Review of Services]</i></p>

<i>[KPI's and Performance]</i>	
Statement of Work agreed by the Customer:	Statement of Work agreed by the Hoople:
Signature	Signature
Name	Name
Title	Title
Date	Date
Date	Date

Work Package agreed by the Council:	Work Package agreed by Hoople:
Signature	Signature
Name	Name
Title	Title
Date	Date

SCHEDULE 5

[POLICIES]

[Consider if policies will be detailed]

SCHEDULE 6

DATA PROTECTION

PART 1

OPERATIVE PROVISIONS

1. Definitions

1.1 In this Schedule:

"Controller" has the meaning given in applicable Data Protection Laws from time to time;

"Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by Hoople under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

"Data Protection Laws" means any applicable Law relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the Services, including:

(a) the Privacy and Electronic Communications Regulations 2003 (as amended by SI 2011 no. 6);

(b) the UK GDPR;

(c) the Data Protection Act 2018,

as each is amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586) and incorporated into UK Law,

(d) any Laws which implement or supplement any such Laws; and

(e) any Laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

"Data Protection Supervisory Authority" means any regulator, authority or body responsible for administering Data Protection Laws;

"Data Subject" has the meaning given in applicable Data Protection Laws from time to time;

"Personal Data" has the meaning given in applicable Data Protection Laws from time to time;

"Personal Data Breach" has the meaning given in applicable Data Protection Laws from time to time;

"processing" has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including "**process**", "**processed**", and "**processes**" shall be construed accordingly);

"Processing End Date" means in respect of any Protected Data, the earlier of:

(a) the end of the provision of the relevant Services related to the processing of such Protected Data; or

- (b) once processing by Hoople of such Protected Data is no longer required for the purpose of Hoople's performance of its relevant obligations under this Agreement;

"Processor" has the meaning given in applicable Data Protection Laws from time to time;

"Protected Data" means Personal Data received from or on behalf of the Council, or otherwise obtained in connection with the performance of Hoople's obligations under this Agreement;

"Protective Measures" means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

"Sub-Processor" means any agent, Sub-Contractor or other third party engaged by Hoople (or by any other Sub-Processor) for carrying out any processing activities in respect of the Protected Data; and

"UK GDPR" means the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time).

1.2 Unless otherwise expressly stated in this Agreement:

1.2.1 references to any paragraphs in this Schedule 6, Part 1 are to paragraphs within this Schedule 6, Part 1; and

1.2.2 Hoople's obligations and the Council's rights and remedies under this Schedule 6 are cumulative with, and additional to, one another and those under any other provisions of this Agreement.

2. **Compliance with Data Protection Laws**

2.1 The parties agree that the Council is a Controller and that Hoople is a Processor for the purposes of processing Protected Data pursuant to this Agreement.

2.2 Hoople shall, and shall ensure its Sub-Processors and each of Hoople Personnel shall, at all times comply with all Data Protection Laws in connection with the processing of Protected Data and the provision of the Services and shall not by any act or omission cause the Council (or any other person) to be in breach of any of the Data Protection Laws.

2.3 Nothing in this Agreement relieves Hoople of any responsibilities or liabilities under Data Protection Laws.

3. **Indemnity**

3.1 Hoople shall indemnify and keep indemnified the Council against:

3.1.1 all losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, sanctions, expenses, compensation paid to Data Subjects (including compensation to protect goodwill and ex gratia payments), demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Data Protection Supervisory Authority) arising out of or in connection with any breach by Hoople of its obligations under this Schedule 6; and

- 3.1.2 all amounts paid or payable by the Council to a third party which would not have been paid or payable if Hoople's breach of this Schedule 6 had not occurred.

4. **Instructions**

4.1 Hoople shall only process (and shall ensure Hoople Personnel only process) the Protected Data in accordance with Part 2 of this Schedule 6 (or as otherwise specified in a Statement of Work), this Agreement and the Council's written instructions from time to time (including when making any transfer to which paragraph 8 relates) except where otherwise required by applicable Law (and in such a case shall inform the Council of that legal requirement before processing, unless applicable Law prevents it doing so on important grounds of public interest).

4.2 Hoople shall immediately inform the Council if any instruction relating to the Protected Data infringes or may infringe any Data Protection Laws. Hoople shall retain records of all instructions relating to the Protected Data received from the Council.

5. **Security**

5.1 Hoople shall at all times implement and maintain Protective Measures which are appropriate to protect Protected Data against a Data Loss Event which the Council may reasonably reject (but failure to reject shall not amount to approval by the Council of the adequacy of the Protective Measures) having taken account of the:

- 5.1.1 nature of the data to be protected;
- 5.1.2 harm that might result from a Data Loss Event;
- 5.1.3 state of technological development; and
- 5.1.4 cost of implementing any measures.

6. **Sub-processing and personnel**

6.1 Hoople shall not permit any processing of Protected Data by any Sub-Processor or other third party (except its own employees that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the prior specific written authorisation of the Council and only then subject to such conditions as the Council may require.

6.2 Hoople shall ensure that access to Protected Data is limited to the authorised persons who need access to it to supply the Services.

6.3 Hoople shall prior to any Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a binding written contract containing the same obligations as under this Schedule 6 in respect of Protected Data and that (without prejudice to, or limitation of, the foregoing):

6.3.1 includes providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing of the Protected Data will meet the requirements of all Data Protection Laws and comply with Hoople's obligations under this Agreement; and

6.3.2 is enforceable by Hoople,

and ensure each Sub-Processor is at all times subject to a binding written contract that complies with such terms and complies with all such obligations in the relevant contract.

6.4 Hoople shall remain fully liable to the Council under this Agreement for all the acts and omissions of each Sub-Processor and each of the Hoople Personnel as if they were its own.

- 6.5 Hoople shall ensure that all persons authorised by Hoople or any Sub-Processor to process Protected Data are reliable and:
- 6.5.1 adequately trained on compliance with this Schedule 6 as applicable to the processing;
 - 6.5.2 informed of the confidential nature of the Protected Data and that they must not disclose Protected Data; and
 - 6.5.3 subject to a binding and enforceable written contractual obligation to keep the Protected Data confidential.
- 6.6 Hoople shall promptly provide all relevant details concerning, and a copy of, each agreement with a Sub-Processor to the Council on request.
7. **Assistance**
- 7.1 Subject to paragraph 7.2, Hoople shall notify the Council immediately if it:
- 7.1.1 receives a Data Subject Request (or purported Data Subject Request);
 - 7.1.2 receives a request to rectify, block or erase any Protected Data;
 - 7.1.3 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Laws;
 - 7.1.4 receives any communication from the Data Protection Supervisory Authority or any other regulatory authority in connection with Protected Data processed under this Agreement;
 - 7.1.5 receives a request from any third party for disclosure of Protected Data where compliance with such request is required or purported to be required by Law; or
 - 7.1.6 becomes aware of a Data Loss Event.
- 7.2 Hoople's obligation to notify under paragraph 7.1 shall include the provision of further information to the Council in phases, as details become available. The Council shall either, at its sole election: (a) assume full control of the responses to the events set out in paragraph 7.1; or (b) direct Hoople in its response, save where Hoople is required to act quickly and solely within its internal business to minimise the impact(s) of a Data Loss Event.
- 7.3 Taking into account the nature of the processing, Hoople shall provide the Council with reasonable assistance in relation to either party's obligations under Data Protection Laws and any complaint, communication or request made under paragraph 7.2 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 7.3.1 the Council with full details and copies of the complaint, communication or request;
 - 7.3.2 such assistance as is reasonably requested by the Council to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Laws;
 - 7.3.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 7.3.4 assistance as requested by the Council following any Data Loss Event; and/or
 - 7.3.5 assistance as requested by the Council with respect to any request from the Data Protection Supervisory Authority or any other regulatory authority, or any consultation by the Controller with the Data Protection Supervisory Authority or any other regulatory authority.

8. International transfers

8.1 Hoople shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to any country or territory outside the United Kingdom without the prior written authorisation of the Council (which may be refused or granted subject to such conditions as the Council deems necessary) and:

8.1.1 the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of the Data Protection Act 2018); or

8.1.2 the following conditions are fulfilled:

- (a) Hoople has provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Laws) as determined by the Council;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) Hoople complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) Hoople complies with any reasonable instructions notified to it in advance by the Council with respect to the Processing of the Personal Data.

9. Records

9.1 Hoople shall maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of the Council and ensure such records shall include all information:

9.1.1 necessary to demonstrate both parties' compliance with this Schedule;

9.1.2 that each party is required to record and/or maintain under any Data Protection Laws; and

9.1.3 that the Council may reasonably require from time to time.

9.2 Hoople shall make copies of the records referred to in paragraphs 9.1 available to the Council promptly upon request from time to time.

10. Audit

Hoople shall (and shall ensure all Sub-Processors shall) promptly make available to the Council such information as is [reasonably required to demonstrate Hoople's and the Council's compliance with their respective obligations under this Schedule 6 and the Data Protection Laws, and allow for, permit and contribute to audits, including inspections, by the Council (or another auditor mandated by the Council) for this purpose at the Council's request from time to time. Hoople shall provide (or procure) access to all relevant premises, systems, personnel and records during normal business hours for the purposes of each such audit or inspection upon reasonable prior notice (not being less than two Business Days) and provide and procure all further reasonable co-operation, access and assistance in relation to any such audit or inspection.

11. Breach

11.1 Hoople shall promptly (and in any event within 24 hours) notify the Council if it (or any of its Sub-Processors or the Hoople Personnel) suspects or becomes aware of any suspected, actual or threatened occurrence of any Personal Data Breach in respect of any Protected Data.

11.2 Hoople shall promptly (and in any event within 24hours) provide all information as the Council requires to report the circumstances referred to in paragraph 11.1 to a Data Protection Supervisory Authority and to notify affected Data Subjects under Data Protection Laws.

12. **Deletion/return**

- 12.1 Subject to paragraph 12.2, Hoople shall (and shall ensure that each of the Sub-Processors and Hoople Personnel shall) within not less than two Business Days and not more than five Business Days of the relevant Processing End Date securely delete the Protected Data (and all copies) except to the extent that storage of any such data is required by applicable Law (and, if so, Hoople shall inform the Council of any such requirement and shall securely delete such data as soon as it is permitted to do so under applicable law).
- 12.2 Hoople shall (and shall ensure that each of the Sub-Processors and Hoople Personnel shall) promptly comply with any requests from time to time from the Council for the secure return and/or disclosure to the Council of any Protected Data in such form and by such manner as the Council [reasonably requests, provided such request is received within five Business Days of the relevant Processing End Date.
- 12.3 Within two Business Days of the date for performance of any obligation under paragraph 12.1, Hoople shall notify the Council in writing:
- 12.3.1 with confirmation of the extent to which it has complied with all obligations under paragraph 12.1 to delete Protected Data;
 - 12.3.2 if applicable, of the full details of any failure to comply with any obligation under paragraph 12.1 (in which case Hoople shall notify the Council immediately once this has been corrected); and
 - 12.3.3 if applicable, of the full details of any Protected Data that continues to be stored as required by applicable Law (together with confirmation of the relevant law(s)).

PART 2

DATA PROCESSING AND SECURITY DETAILS

Section 1—Data processing details

Processing of the Protected Data by Hoople under this Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this [Section 1 of] Schedule 6, Part 2.

1. **Subject-matter of processing:**

[Insert]

2. **Duration of the processing:**

[Insert]

3. **Nature and purpose of the processing:**

[Insert]

4. **Type of Personal Data:**

[Insert]

5. **Categories of Data Subjects:**

[Insert]

6. **[Specific processing instructions:**

[Insert]

SCHEDULE 7

TUPE

1. **Application of TUPE Regulations [Schedule to be developed by Pinsent Masons]**

1.1 The Council and Hoople agree that:

1.1.1 the commencement of the Services shall constitute a relevant transfer for the purposes of the TUPE Regulations; and

1.1.2 to the extent required by the TUPE Regulations, the contracts of employment of any Employees [together with any collective agreement relating to the Employees] shall have effect after the Services Commencement Date as if originally made between Hoople and/or its Sub-Contractors and the Employees (or between Hoople and/or its Sub-Contractors and the relevant trade union, as the case may be) except in so far as such contracts and such agreements relate to:

- (a) benefits for old age, invalidity or survivors under any occupational pension scheme (within the meaning of the Pension Schemes Act 1993);
- (b) any Employee who objects to the transfer under Regulation 4(7) of the TUPE Regulations; or
- (c) any Employee who is treated as dismissed prior to the relevant transfer under Regulation 4(9) of the TUPE Regulations.

2. **Trade unions**

Hoople shall, and shall procure that any Sub-Contractors shall, to the extent required by the TUPE Regulations recognise and continue to recognise the trade unions representing the Employees after the Services Commencement Date as they were recognised immediately before the Services Commencement Date.

3. **Reasonable assistance**

3.1 Without prejudice to any obligation under regulations 11 and 13 of the TUPE Regulations, each party shall, and shall procure that their Sub-Contractors shall, provide such information, assistance and co-operation to the other party as may reasonably be required:

3.1.1 to ensure the smooth transfer of the Employees under the TUPE Regulations and of the rights, powers, duties and liabilities relating to them;

3.1.2 to enable the parties and any outgoing supplier or successor supplier to discharge their obligations to inform and consult any appropriate representatives (as defined by Regulation 13 of the TUPE Regulations) about any such transfer sufficiently in advance to enable meaningful consultation to take place; and

3.1.3 to enable the Council to provide information to potential suppliers in advance of the Services Termination Date.

4. **Hoople's responsibilities**

4.1 Hoople shall be responsible for and shall indemnify and keep indemnified in full the Council and any successor supplier against any Employment Costs or Employment Liabilities incurred by the Council or any Successor Supplier which arise out of or in connection with:

4.1.1 any failure by Hoople or any of its Sub-Contractors to provide the information, assistance and co-operation required under this Schedule 7 or any failure to comply with its or their obligations under Regulations 13 and 14 of the TUPE Regulations;

- 4.1.2 any claim by any Employee arising out of any act or proposal by Hoople or any Sub-Contractors of Hoople prior to or following the Services Commencement Date which amounts to a repudiatory breach of the relevant Employee's contract of employment under Regulation 4(11) of the TUPE Regulations and/or a substantial change in working conditions of any Employee to the material detriment of that Employee under Regulation 4(9) of the TUPE Regulations;
- 4.1.3 all remuneration, benefits, entitlements, outgoings and damages, penalties, awards, legal costs, expenses and any other liabilities in respect of the Employees including all wages, holiday pay, bonuses, commission, PAYE, national insurance contributions, pension contributions and otherwise, from and including the Services Commencement Date; and
- 4.1.4 any Hoople Personnel engaged in the provision of the Services at any time up to and including the date of termination of this Agreement.

5. Council's responsibilities

- 5.1 The Council shall be responsible for and shall indemnify and keep indemnified in full Hoople against all Employment Costs and Employment Liabilities incurred by Hoople [or its Sub-Contractors] which arise out of or in connection with:
 - 5.1.1 the employment or engagement (or the termination of the employment or engagement) of any Employee prior to the Services Commencement Date save to the extent that the liability arises under Regulation 4(9) or 4(11) of the TUPE Regulations or as a result of Hoople's [or any relevant Sub-Contractor's] failure to comply with Regulation 13 of the TUPE Regulations;
 - 5.1.2 any claim or allegation by a person other than an Employee that his or her employment or engagement or any rights or obligations relating to it or its termination has transferred to Hoople [or any Sub-Contractor] pursuant to the TUPE Regulations; and
 - 5.1.3 any failure by the Council or any Outgoing Supplier [or any of its or their Sub-Contractors] to provide the information, assistance and co-operation required under this Schedule 7 or any failure to comply with its or their obligations under Regulations 13 and 14 of the TUPE Regulations.
- 5.2 The Council shall not, and shall procure that any Outgoing Supplier shall not, prior to the Services Commencement Date without the prior consent of Hoople:
 - 5.2.1 increase or decrease the number of persons assigned to the Services other than in the ordinary course of business;
 - 5.2.2 increase the annual remuneration of the persons assigned to the Services other than pursuant to any annual pay review or in the ordinary course of business; or
 - 5.2.3 assign any person to the Services or reassign any person away from the Services other than in the ordinary course of business.

6. Termination assistance

- 6.1 Without prejudice to other provisions of this Schedule 7 or to any rights or obligations under the TUPE Regulations regarding Employee Liability Information, Hoople shall during the last six months of the Term:
 - 6.1.1 provide the Termination Assistance to the Council;
 - 6.1.2 subject to any applicable Law relating to the processing, privacy, and use of Personal Data, as applicable to the Council and/or Hoople, upon request from the Council provide in respect of any Hoople Personnel assigned to any Services (the "**Assigned Employees**") full and accurate details of the identity, number, job title, gender, job description, salary or

wages, length of service, notice period, contracted hours of work, overtime worked (over at least a twelve month period), redundancy entitlement, retirement age, entitlement to holiday, sick leave/sick pay, maternity, paternity, adoption, special leave, any loan or leasing schemes, collective agreements, benefits in kind or matters relating to terms and conditions of employment (the "**Recontracting Information**");

- 6.1.3 provide the Recontracting Information promptly and at no cost to the Council;
- 6.1.4 notify the Council promptly in writing of any material changes to the Recontracting Information promptly as and when such changes arise;
- 6.1.5 not increase the annual remuneration of the Hoople Personnel other than pursuant to any annual pay review or in the ordinary course of business; or
- 6.1.6 not assign any person to the Services or reassign any person away from the Services other than in the ordinary course of business.

6.2 Without prejudice to any other provision of this Schedule 7 or to any rights and obligations under the TUPE Regulations regarding Employee Liability Information, the Council shall at no cost to Hoople:

- 6.2.1 provide to Hoople not less than 20 Business Days prior to the Services Commencement Date the Employee Liability Information in respect of any Employee (the "**Initial Employee Information**"); and
- 6.2.2 notify Hoople promptly in writing of any material changes to the Initial Employee Information promptly as and when such changes arise.

7. **Consequences of failing to provide information**

7.1 Without prejudice to its rights and obligations regarding Employee Liability Information, Hoople shall indemnify and keep indemnified in full the Council and any Successor Supplier against all Employment Liabilities suffered or incurred by the Council or any Successor Supplier arising from any claim by any party as a result of Hoople or its Sub-Contractors failing to provide the Council with full, accurate and up to date Recontracting Information or to notify any changes to the Recontracting Information in accordance with this Schedule 7.

8. **TUPE on termination or expiry**

8.1 Without prejudice to the Law at the date of termination of the Agreement, the Council and Hoople agree that it is their expectation that the TUPE Regulations shall apply in respect of the provision after the date of termination of the Agreement of any service which is fundamentally the same as all or any part of the Services.

8.2 In relation to any Hoople Personnel assigned to the Services immediately before the Services Termination Date whose employment transfers to the Council or a Successor Supplier or any Sub-Contractor pursuant to the TUPE Regulations (the "**Returning Employees**") Hoople shall:

- 8.2.1 ensure (or shall procure) that all wages, salaries and other benefits of the Returning Employees and all PAYE tax deductions and national insurance contributions relating thereto in respect of the period up to the Services Termination Date are satisfied;
- 8.2.2 remain responsible for all Hoople Personnel other than the Returning Employees after the Services Termination Date; and
- 8.2.3 indemnify and keep indemnified in full the Council and any Successor Supplier against any Employment Liabilities resulting from any claim by any Hoople Personnel including but not limited to any claim by a person other than a Returning Employee that their employment or any liability arising out of or connected with it or its termination has transferred to the Council or any Successor Supplier pursuant to the TUPE Regulations.

8.3 If the TUPE Regulations do not apply on the date of termination of the Agreement, the Council or any Successor Supplier may at its discretion offer employment to any Hoople Personnel assigned to the Services immediately before the Services Termination Date on such terms and conditions as the Council or the Successor Supplier (as the case may be) deems appropriate.

9. **Redundancy consultation**

9.1 The Council shall if so requested prior to the Services Commencement Date fully co-operate with Hoople regarding any pre-transfer consultation that Hoople wishes to undertake with representatives of any Employees for the purposes of sections 188 to 198 of TULR(C)A 1992 and shall, for the purposes of section 198A(3)(a) of TULR(C)A 1992, provide its agreement to Hoople as requested.

9.2 Hoople shall if so requested at any time during the last [insert number] months of the Term fully co-operate with the Council and any Successor Supplier regarding any pre-transfer consultation that the Council or any Successor Supplier wishes to undertake with representatives of any Hoople Personnel for the purposes of sections 188 to 198 of TULR(C)A 1992 and shall, for the purposes of section 198A(3)(a) of TULR(C)A 1992, provide its agreement to the Council or any Successor Supplier as requested.

10. **Notification of claims**

10.1 Without prejudice to any obligation under clause 29, each party undertakes that, if a claim, demand or action is made or threatened that may give rise to a claim for indemnity under this Schedule 7 that party shall as the case may be:

10.1.1 notify the indemnifying party of the claim, demand or action in writing within five Business Days of it first being made or threatened or if not reasonably practicable to do so then as soon as reasonably practicable;

10.1.2 give the indemnifying party promptly all reasonable co-operation, assistance and information which may be relevant to the claim, demand or action; and

10.1.3 not admit, defend, compromise, negotiate or settle the claim or action without the consent of the indemnifying party (such consent not to be unreasonably withheld) in writing.

SCHEDULE 8
CHANGE REQUEST

[To include form of change control]

SCHEDULE 9

GOVERNANCE

[To consider if schedule required to cover the approach to governance arrangement in relation to the Agreement] [Front end clause will also be required]