



## CONTRACT FOR SUPPLY OF SERVICES

This contract relates to the agreement between the parties detailed on the Quotation/Order Form as is valid from the date on the Quotation/Order Form (Schedule One)

Mploy Solutions Limited incorporated and registered in England and Wales with company number 07696001 whose registered office is at 9 Dalby Court, Gadbrook Park, Northwich, Cheshire CW9 7TN (Supplier)

## BACKGROUND

Agreement for the supply of Mploy Solutions Ltd services.

## AGREED TERMS

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Customer's Equipment: any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

Customer's Manager: the Customer's manager for the Services, appointed in accordance with clause 5.1.

Deliverables: all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants, employees and workers in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

In-put Material: all Documents, information and materials provided by the Customer relating to the Services, including computer programs, data, reports and specifications.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Pre-existing Materials: all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, reports and specifications.

Work: the work as described in the Work Plan.

Work Milestones: a date by which a part of the Work is estimated to be completed, as set out in the Work Plan.

Work Plan: the detailed plan describing the Work and setting out the estimated timetable (including Work Milestones) and responsibilities for the provision of the Services agreed in accordance with clause 3.

Services: the services to be provided by the Supplier under this agreement as set out in Schedule 1, together with any other services which the Supplier provides or agrees to provide to the Customer].

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

Supplier's Manager: the Supplier's manager for the Services appointed under clause 4.3.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors and permitted assigns].

1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.

1.5 Words in the singular shall include the plural and vice versa.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.7 A reference to writing or written includes faxes but not e-mail.

1.8 Where the words include(s), including or in particular are used in this agreement, they are deemed to have the words without limitation following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

1.9 Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

1.10 References to clauses and schedules are to the clauses and schedules of this agreement.

## **2. COMMENCEMENT AND DURATION**

2.1 The Supplier shall provide the Services to the Customer on the terms and conditions of this agreement.

2.2 The Supplier shall provide the Services to the Customer from the date specified in the Work Plan.

## **3. WORK PLAN**

3.1 The Work Plan shall be agreed in the following manner:

(a) the Supplier shall, as soon as reasonably practicable, provide the Customer with a draft Work Plan; and

(b) the Supplier and the Customer shall discuss and agree the draft Work Plan and when it has been agreed, they shall both sign a copy of it and it shall become Schedule [2] to and subject to this agreement.

3.2 The Supplier shall charge for the preparation of the Work Plan on a time and materials basis in accordance with clause 7.

3.3 Once the Work Plan has been agreed and signed in accordance with clause 3.1(c), no amendment shall be made to it except in accordance with clause 6 and clause 14.

#### 4. SUPPLIER'S OBLIGATIONS

4.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance with the Work Plan in all material respects.

4.2 The Supplier shall use reasonable endeavours to meet Work Milestones specified in Work Plan, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.

4.3 The Supplier shall appoint the Supplier's Manager in respect of each Work who shall have authority contractually to bind the Supplier on all matters relating to the Services. The Supplier shall use reasonable endeavours to ensure that the same person acts as the Supplier's Manager throughout the term of this agreement, but may replace him from time to time where reasonably necessary in the interests of the Supplier's business.

4.4 The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it under clause 5.1(e), provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

#### 5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

(a) co-operate with the Supplier in all matters relating to the Services and appoint the Customer's Manager in relation to the Services who shall have the authority contractually to bind the Customer on matters relating to the Services;

(b) provide, for the Supplier, its agents, subcontractors, consultants and employees and any other person or persons authorised by the supplier, in a timely manner and at no charge, access to all parts of the Customer's premises, office equipment and accommodation, data and other facilities at all times and as required by the Supplier;

(c) provide, in a timely manner, such In-put Material and other information as the Supplier may require, and ensure that it is accurate in all material respects;

(d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Supplier of all of the Customer's obligations and actions under this clause 5.1(d)];

(e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;

(f) ensure that all Customers' Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;

(g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Supplier's Equipment, the use of In-put Material and the use of the Customer's Equipment in relation to the Supplier's Equipment [insofar as such

licences, consents and legislation relate to the Customer's business, premises, staff and equipment], in all cases before the date on which the Services are to start;

(h) keep, maintain and insure the Supplier's Equipment in good condition and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation.

5.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

5.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

5.4 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of six months after the date of termination of this agreement, directly or indirectly solicit or entice away or attempt to solicit or entice away from the Supplier or employ or attempt to employ or engage the services in any capacity whatever whether as employee, consultant, subcontractor, Director or Partner any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

5.5 Any consent given by the Supplier in accordance with clause 5.4 shall be subject to the Customer paying to the Supplier before such consent is given a sum equivalent to 25% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 25% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

## **6. CHANGE CONTROL**

6.1 The Customer's Manager and the Supplier's Manager shall meet at least once in each period of three months of the contract commencing on the date of this agreement to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.

6.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to the Supplier's charges arising from the change;
- (c) the likely effect of the change on the Work Plan; and
- (d) any other impact of the change on this agreement.

6.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services, the relevant Work Plan and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 14.

6.4 Notwithstanding clause 6.3, the Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the Supplier requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.

6.5 The Supplier may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with clause 7.

## 7. CHARGES AND PAYMENT

7.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in 1, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Clause 7.2 shall apply if the Supplier provides Services on a time and materials basis and clause 7.3 shall apply if the Supplier provides Services for a fixed price. The remainder of this clause 7 shall apply in either case.

7.2 Where Services are provided on a time and materials basis:

(a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates, as amended from time to time by the Supplier in accordance with clause 7.5;

(b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of a 7.5 hour day, worked between 8.30 am and 5.00 pm on weekdays (excluding public holidays);

(c) the Supplier shall be entitled to charge an overtime rate of 150% of the normal daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the [Work OR Services] outside the hours referred to in clause 7.2(b);

(d) all charges quoted to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate;

(e) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each invoice referred to in clause 7.2(f); and

(f) the Supplier shall invoice the Customer in advance for its charges for time, expenses and materials (together with VAT where appropriate) for the service provided, calculated as provided in this clause 7.2 and clause 7.4.

7.3 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in Part 1 of Schedule 3 as amended from time to time in accordance with clause 7.5. The Customer shall pay the total price to the Supplier (without deduction or set-off) in instalments, as set out in [ Part 2 of Schedule 3.

7.4 Any fixed price contained in Part 1 of Schedule 3 excludes:

(a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier [at cost]; and

(b) VAT, which the Supplier shall add to its invoices at the appropriate rate.

7.5 The parties agree that the Supplier may review and increase its standard daily fee rates, provided that such charges cannot be increased more than once in any 12 month period. The Supplier shall give the Customer written notice of any such increase three months before the proposed date of that increase. If such increase is not acceptable to the Customer, it may, within one month of such notice being received or deemed to have been received in accordance with clause 22, terminate the agreement by giving three months written notice to the Supplier.

7.6 The Customer shall pay each invoice submitted to it by the Supplier according to the Payment Terms and Conditions, in full and in cleared funds, within 14 days of receipt to a bank account nominated in writing by the Supplier.

7.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:

(a) claim interest under the Late Payment of Commercial Debts (Interest) Act 1998] and the Customer shall pay the interest immediately on demand; and

(b) suspend all Services until payment has been made in full.

7.8 All sums payable to the Supplier under this agreement shall become due immediately on its termination, despite any other provision. This clause 7.8 is without prejudice to any right to claim for interest under the law, or any such right under this agreement.

7.9 Each party may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the other party under this agreement against any amounts payable by it to the other party under this agreement.

## **8. INTELLECTUAL PROPERTY RIGHTS**

8.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to clause 8.2, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If the Supplier terminates this agreement under clause 12.2, this licence will automatically terminate.

8.2 The Customer acknowledges that, where the Supplier does not own any of the Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

## **9. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**

9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.

9.2 The Customer may disclose such information:

(a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under this agreement; and

(b) as may be required by law, court order or any governmental or regulatory authority.

9.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 9.

9.4 The Customer shall not use any such information for any purpose other than to perform its obligations under this agreement.

9.5 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain [as between the Supplier and the Customer] the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

## **10. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

10.1 This clause 10 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:

(a) any breach of this agreement, any deliberate breach of this agreement by the Supplier, or its employees, agents or subcontractors;

(b) any use made by the Customer of the Services, the Deliverables or any part of them; and

(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.

10.3 Nothing in this agreement limits or excludes the liability of the Supplier:

(a) for death or personal injury resulting from negligence; or

(b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or

(c) for any liability incurred by the Customer as a result of any breach by the Supplier of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

10.4 Subject to clause 10.2 and clause 10.3:

(a) the Supplier shall not be liable for:

(i) loss of profits; or

(ii) loss of business; or

(iii) depletion of goodwill and/or similar losses; or

(iv) loss of anticipated savings; or

(v) loss of goods; or

(vi) loss of contract; or

(vii) loss of use; or

(viii) loss of corruption of data or information; or

(ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

(b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement shall be limited to the price paid for the Services delivered and paid for previously during the contract.

## 11. DATA PROTECTION

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.

## 12. TERMINATION

12.1 Subject to clause 12.4 and 12.2, this agreement shall terminate automatically on completion of the Services in accordance with the Work Plan. In the case of any financial default this contract will however terminate immediately.

12.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this agreement without liability to the other on giving the other not less than three months' written notice if:

(a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or

(b) the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

(c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or

(d) the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or [(being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986] or (being a partnership) has any partner to whom any of the foregoing apply; or

(e) the other party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party]; or

(f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party]; or

(g) an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or

(h) a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or

(i) a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or

(j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within [14] days; or

(k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2(d) to clause 12.2(j) (inclusive); or

(l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

(m) there is a change of control of the other party.

12.3 The parties acknowledge and agree that any breach of clauses 12.2(a) - (l) shall constitute a material breach for the purposes of this clause 12.

12.4 On termination of this agreement for any reason:

(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

(b) the Customer shall, within a reasonable time, return all of the Supplier's Equipment, Pre-existing Materials and Deliverables. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;

(c) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination; and

(d) clauses which expressly or by implication have effect after termination shall continue in full force and effect, including the following clauses: clause 8 (Intellectual property rights), clause 9 (Confidentiality and the Supplier's property), clause 10 (Limitation of liability), clause 12.4, clause 22 (Notices), clause 23 (Dispute resolution), clause 24 (Governing law and jurisdiction).

### **13. FORCE MAJEURE**

13.1 A party, provided that it has complied with the provisions of clause 13.3, shall not be in breach of this agreement, nor liable for any failure or delay in performance of any obligations under this agreement [(and, subject to clause 13.4, the time for performance of the obligations

shall be extended accordingly)] arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (Force Majeure Event), including but not limited to any of the following:

- (a) acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
- (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (c) terrorist attack, civil war, civil commotion or riots;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) voluntary or mandatory compliance with all legislation, statutory rules, order, regulations or directions [(including a failure to grant any licence or consent needed or any change in the above or interpretation of the above)];
- (f) fire, explosion or accidental damage;
- (g) loss at sea;
- (h) extreme adverse weather conditions;
- (i) collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
- (j) any law, judgement, decree, embargo, labour dispute, including but not limited to strikes, industrial action, lockouts, or boycott;
- (k) non-performance by suppliers or; and
- (l) interruption or failure of utility service, including but not limited to electric power, gas or water.
- (m) Any other matter or cause beyond the control of the Supplier

13.2 The corresponding obligations of the other party will be suspended to the same extent.

13.3 Any party that is subject to a Force Majeure Event shall not be in breach of this agreement provided that:

- (a) it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
- (b) [it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and]
- (c) it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

13.4 If the Force Majeure Event prevails for a continuous period of more than one month, either party may terminate this agreement by giving seven days' written notice to all the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

#### **14. VARIATION**

Subject to clause 3 and clause 6, no variation of this agreement [or of any of the documents referred to in it] shall be valid unless it is in writing and signed by or on behalf of each of the parties.

#### **15. WAIVER**

15.1 A waiver of any right or remedy under this agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

15.2 No single or partial exercise of any right or remedy provided under this agreement or by law shall preclude or restrict the further exercise of any such right or remedy.

#### **16. CUMULATIVE REMEDIES**

Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

#### **17. SEVERANCE**

17.1 If any provision of this agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the agreement, and the validity and enforceability of the other provisions of the agreement shall not be affected.

17.2 If a provision of this agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### **18. ENTIRE AGREEMENT**

18.1 This agreement [and any documents annexed to it and initialled by the parties constitute[s] the entire agreement between the parties and supersede[s] and extinguish[es] all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this agreement.

18.2 Each party acknowledges that, in entering into this agreement and the documents annexed to it, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement [or those documents]. Each party agrees that its only liability in respect of those representations and warranties that are set out in this agreement or those documents (whether made innocently or negligently) shall be for breach of contract.

18.3 Nothing in this clause shall limit or exclude any liability for fraud.

#### **19. ASSIGNMENT**

19.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under this agreement.

19.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under this agreement.

19.3 Each party that has rights under this agreement is acting on its own behalf and not for the benefit of another person.

## 20. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## 21. RIGHTS OF THIRD PARTIES

A person who is not a party to this agreement shall not have any rights under or in connection with it.

## 22. NOTICES

22.1 A notice or other communication given to a party under or in connection with this agreement:

(a) shall be in writing in English (or accompanied by a properly prepared translation into English);

(b) shall be signed by or on behalf of the party giving it;

(c) shall be sent for the attention of the person, at the address or fax number specified in this clause (or to such other address, fax number or person as that party may notify to the other, in accordance with the provisions of this clause); and

(d) shall be:

(i) delivered personally; or

(ii) sent by commercial courier; or

(iii) sent by fax; or

(iv) sent by pre-paid first-class post or recorded delivery; or

(v) sent by airmail requiring signature on delivery.

22.2 The addresses for service of a notice or other communication are as follows:

(a) Supplier: Mploy Solutions Limited

(i) address: 9 Dalby Court, Gadbrook Park, Northwich, Cheshire CW9 7TN

(ii) for the attention of: Norma Guest, Managing Director

(iii) fax number: 01606 43435

(b) Customer:

(i) address: as detailed in the Quotation/Order Form (Schedule One)

(ii) for the attention of: as detailed in the Quotation/Order Form (Schedule One)

(iii) fax number: as detailed in the Quotation/Order Form (Schedule One)

22.3 If a notice or other communication has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:

- (a) if delivered personally, at the time of delivery; or
- (b) if delivered by commercial courier, at the time of signature of the courier's receipt; or
- (c) if sent by fax, at the time of transmission; or
- (d) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the third day after posting; or
- (e) if sent by airmail, five days from the date of posting.

22.4 For the purposes of this clause:

- (a) all times are to be read as local time in the place of deemed receipt; and
- (b) if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice [or other communication] is deemed to have been received when business next starts in the place of receipt.

22.5 To prove delivery, it is sufficient to prove that:

- (a) if sent by fax, the notice [or other communication] was transmitted by fax to the fax number of the party; or
- (b) if sent by pre-paid first class post, the envelope containing the notice [or other communication] was properly addressed and posted and proof of posting is obtained.

22.6 The provisions of this clause 22 shall not apply to the service of any process in any legal action or proceedings.

22.7 A notice [or other communication] required to be given under [or in connection with] this agreement shall not be validly served if sent by e-mail.

## **23. DISPUTE RESOLUTION**

23.1 If any dispute arises in connection with this agreement, the Supplier's Manager and the Customer's Manager in each case duly authorised to resolve the dispute shall, within seven days of a written request from one party to the other attend a meeting (the Meeting), in a good faith effort to resolve the dispute.

23.2 If the dispute is not resolved at the meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (ADR notice) to the other party requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 20 days after the date of the ADR notice.

23.3 No party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by any delay.

## 24. GOVERNING LAW AND JURISDICTION

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

24.2 The parties irrevocably agree that the courts of England and Wales shall have [exclusive OR non-exclusive] jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated in the Quotation/Order Form (Schedule One).

## **SCHEDULE ONE - Quotation/Order Form**

### **SERVICES and PRICING**

Please see the Quotation/Order Form (marked Schedule One) for a description of the Services to be provided under this agreement, details of the price and the terms and conditions of payment.

## **SCHEDULE TWO - Work Plan**

### **WORK PLAN**

Please see Work Plan agreed in accordance with Clause 3 - including details of the work to be undertaken and milestones agreed.