

Date 1st June

2019

Headforwards Solutions Limited (1)

and

XXX Limited (2)

OUTSOURCING AGREEMENT

THIS AGREEMENT is dated

2019

PARTIES:

- (1) **Headforwards Solutions Limited** (crn 07576641) whose registered office is at The Engine House, Wheal Kitty, St Agnes, Cornwall TR5 0RD (the “**Service Provider**”); and
- (2) The **XXXX Limited** (crn nnnnnnnnn) whose registered office is at XXXXX (the “**Client**”).

BACKGROUND:

- (A) The Client wishes to appoint the Service Provider to provide certain code writing services to the Client and the Service Provider has agreed to provide such services on the terms of this Agreement.

THE PARTIES AGREE:

1 Definitions, interpretation and scope:

- 1.1 In this Agreement unless otherwise provided:

Associates means in relation to a party, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with that party from time to time;

Authorised Representative means the persons respectively designated as such by the Client and Service Provider or their successors as may be notified to the other party in writing;

Business Day means a day (other than a Saturday or Sunday) on which banks are generally open in London for non-automated normal business;

Change means any proposed change, amendment or alteration to this Agreement (or a document attached to it) or to any Schedule, or any proposed change to the Services or to add new services or to cease any part of the Services, including adding new functionality or new services;

Change Control Note means a note which details the impact the proposed Change will have on the Services or any time scales or price estimates or Charges;

Change Request means a request for a Change

Change Control Procedure means the procedure for agreeing Changes as set out in Clause 23;

Charges means the charges levied by the Service Provider for the Services as set out in the Schedule and in accordance with the terms of this Agreement;

Client Data means any data or output or reports used by the Client in connection with the Software or created or processed using the Software whether by the Client or by the Service Provider on behalf of the Client;

Client Materials means any software, data, calculations, algorithms, methods, information and other materials supplied by the Client to the Service Provider for the purposes of the Services;

Confidential Information means all non-public information (whether in oral, written or electronic form) given by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, intellectual property, assets, strategy, products and clients, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any Associate, person, firm, or organisation associated with that party excluding the information set out in clause 13.4;

Control means that a person owns directly or indirectly more than 50% of the shares or securities of the other person representing the right to vote on all or substantially all matters including the election of directors and **Controls** and **Controlled** shall be interpreted accordingly;

Data Protection Laws means any applicable laws relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the Services, including: the GDPR; the Data Protection Act 2018, any laws that implement or replace, extend consolidate or amend any such laws and all guidance, guidelines, codes of practice and codes of conduct issued by any relevant Data Protection Supervisory Authority relating to such Data Protection Laws (in each case whether or not legally binding);

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

Dispute Resolution Procedure means the procedure set out in clause 26;

Effective Date means the date of this agreement;

GDPR means the General Data Protection Regulation, Regulation (EU) 2016/679;

Good Industry Practice means, in relation to any undertaking and any circumstances, the exercise of that degree of care, diligence and skill which would reasonably and ordinarily be expected from a skilled, professional and experienced person engaged in the same type of undertaking under the same or similar circumstances;

Intellectual Property Rights means copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights, chip topography rights, and any other intellectual property rights (whether registered or unregistered) and all applications for any of the foregoing, anywhere in the world;

Location means such location within Cornwall or other location (within the UK) as the Client may notify to the Service Provider in writing from time to time;

Personnel means an employee or sub-contractor of the Service Provider tasked with undertaking duties in respect of the Services;

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;**Professional Day** means a maximum of seven and a half (7.5) hours worked in or out of the office;

Protected Data means Personal Data received from or on behalf of the Client, or otherwise obtained by the Service Provider (or anyone acting on its behalf) in connection with the performance of the Service Provider's obligations under this Agreement;

Representatives means the representative(s) appointed by each party or their successors as may be notified to the other party;

Restricted Employee means a person employed or engaged, or otherwise acting on behalf of either party, for a continuous period of three months, or a person previously employed or previously engaged (provided that they had been employed or engaged for a continuous period of three months prior to the date on which their employment or engagement ceased), and such employment or engagement has ceased to exist for a continuous period of less than six months, who: (i) was employed or engaged in the

provision of the Services; or (ii) who had material contact with the other party with respect to such Services;

Schedule means the schedule to this Agreement;

Service Levels means the standard of performance for the Services as set out in the Schedule;

Services means the code writing services as set out in the Schedule;

Start Date means the date set out in the Schedule;

Sub Processor means any Sub-contractor engaged by the Service Provider (or by any other Sub-processor) for carrying out any processing activities in respect of the Protected Data;

Third Party Provider means the provider of any of the third party products; and

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

- 1.1.1 Unless the context otherwise requires:
- 1.1.2 Each gender includes the others.
- 1.1.3 The singular includes the plural and vice versa.
- 1.1.4 References to clauses, schedules or appendices mean to clauses, schedules or appendices of this Agreement.
- 1.1.5 References to this Agreement includes the Schedule.
- 1.1.6 References to persons include individuals, unincorporated bodies, government entities, companies and corporations.
- 1.1.7 the words “including” or “includes” means including or includes without limitation.
- 1.1.8 References to a “party” or the “parties” means the parties to this Agreement.

- 1.2 In the case of any ambiguity between any provision contained in the body of this Agreement and the provision contained in any Schedule or annex, the provisions in the body of this Agreement shall take precedence.

2 Duration

- 2.1 This Agreement shall commence with effect from the Effective Date and shall continue for a term of 12 months ("Initial Term") continuing thereafter for successive periods of 12 months (each a "Renewal Term") unless either party gives not less than three months prior written notice of termination to expire at the end of the Initial Term or applicable Renewal Term and subject always to earlier termination pursuant to clause 11.

3 Supply of Services

- 3.1 The Service Provider shall provide the Services to the Client with effect from the Start Date for the duration of this Agreement in accordance with the terms of this Agreement.

4 Personnel

- 4.1 The Service Provider shall ensure that it has sufficient, suitably experienced, trained and appropriately qualified Personnel to perform the Services.
- 4.2 The Personnel engaged in the provision of the Services on behalf of the Service Provider shall:
- 4.2.1 sign any confidentiality agreements or other such agreements as are required by the Client;
 - 4.2.2 at all times throughout the provision of the Services remain the employees or sub-contractors of the Service Provider;
 - 4.2.3 remain under the overall supervision and control of the Service Provider; and
 - 4.2.4 not for any purpose be deemed employees of the Client.

- 4.3 The parties consider that the Transfer Regulations will not apply if the Services or any of them are completed, terminated or transferred (or deemed to have been transferred) to the Client.
- 4.4 In the event that any of the Personnel should cease to be an employee of or cease to provide services to the Service Provider (the Service Provider's terms of employment for employees and terms of engagement for contractors shall provide that 4 weeks notice is to be given) then the Service Provider shall notify the Client within 24 hours of receiving notification and the Service Provider shall seek replacement Personnel immediately.
- 4.5 The Client acknowledges that in the case of employees, the Service Provider's employment contract shall provide for 33 days plus 1 per year of service to a maximum of 38 days (including bank and public holidays) paid holiday and contractual sick pay of 7 days the costs of which will be included within the Charges.
- 4.6 Personnel shall provide 2 weeks prior notice of any holiday requests greater than 2 days in duration or such notice period as agreed within the discretion of the Personnel's manager in discussion with the Client, Where requested by the Client, the Service Provider shall use reasonable endeavours to provide suitably experienced, trained and appropriately qualified employees or subcontractors to cover for Personnel that take a leave of absence (including sickness or holiday). The Service Provider agrees that the Client shall not be charged by the Service Provider for Personnel that take sick leave beyond a continuous period of 7 days.

5 Client Obligations

- 5.1 The Client shall provide or procure for the Service Provider and/or Personnel:
- 5.1.1 reasonable access as necessary to the Client systems and data including, where appropriate, remote access to the Client's servers and software to enable the Service Provider to work remotely on the Client's servers to the extent required for the provision of the Services;
- 5.1.2 reasonable access as necessary to the Client Personnel and those of its third party providers to the extent required for the provision of the Services;

- 5.1.3 reasonable cooperation and accurate information to the extent required for the provision of the Services.

6 Service Provider obligations

- 6.1 The Service Provider shall use its reasonable endeavours to:
 - 6.1.1 provide the Services in accordance with the Service Levels set out in the Schedule; and
 - 6.1.2 provide the Services in accordance with Good Industry Practice.
- 6.2 Unless otherwise agreed by the parties, time is not of the essence in relation to any delivery times set out as part of the Service Levels in the Schedule. A fixed time-scale may be extended for a reasonable period upon the agreement in writing of the parties or if any delay or stoppage is caused by any act or omission of the Client or its employees, agents or sub-contractors or caused by a Force Majeure.
- 6.3 The Service Provider shall procure that any Personnel given access to the Client's systems shall comply with the Client's policies on confidentiality, data protection, security as are notified by the Client to the Service Provider from time to time in writing in addition to compliance with the provisions on confidentiality, data protection and security contained in this Agreement.

7 Intellectual property rights

- 7.1 All Intellectual Property created by the Service Provider or any employee, agent or sub-contractor of the Service Provider in the course of performing the Services shall vest in the Client.
- 7.2 All Intellectual Property in the Client Materials and any other information, materials or assets supplied to the Service Provider by the Client shall remain vested in the Client or its third party licensors. The Client shall grant or shall procure the grant of a licence to the Service Provider to utilise the Client Materials or such other information, materials or assets to the extent required for the provision of the Services.

7.3 The Service Provider shall be entitled to use in any way it deems fit any skills, techniques or know how acquired or developed or used in the performance of the Services provided always that such skills, techniques or know how do not:

7.3.1 infringe the Client's Intellectual Property Rights in the Client Data or the Client Materials;

7.3.2 disclose or breach the confidentiality of the Client's Confidential Information.

8 Charges and payment

8.1 In consideration of the provision of the Services by the Service Provider the Client shall pay to the Service Provider the Charges without any set-off, counterclaim or other deduction whatsoever.

8.2 The Service Provider shall invoice the Client electronically for the Charges due under this Agreement monthly in arrears. Each invoice shall be paid by the Client in full without set-off or counterclaim within 7 days of the Client's receipt of such invoice.

8.3 Any additional Charges shall be invoiced by the Service Provider to the Client monthly in arrears accompanied by any substantiating documentation which may be reasonably required by the Client.

8.4 All Charges and payments to be made by the Client under this Agreement are stated exclusive of VAT which shall additionally be paid by the Client where applicable at the rate and from time to time in the manner prescribed by law.

8.5 Subject to the Client's prior approval by email, the Client shall reimburse the Service Provider for such reasonable expenses as are incurred by the Service Provider as travel and accommodation costs in the event that the Service Provider attends at a meeting outside of Redruth, Cornwall to the extent required for the provision of the Services provided that the Service Provider shall provide the Client with such receipts or other evidence of actual payment of such expenses as the Client may reasonably require.

- 8.6 If the Client fails to make any payment due to the Service Provider in full within 14 days of the due date then, without prejudice to any other right or remedy, the Service Provider shall be entitled to:
- 8.6.1 suspend performance of any Services until all sums due to the Service Provider have been paid in full;
 - 8.6.2 charge the Client fees and interest (both before and after any judgment) on any unpaid amount inline with the Late Payment of Commercial Debts Act from the due date until the actual date of receipt of such amount by the Service Provider;
 - 8.6.3 terminate this agreement.
- 8.7 The Service Provider reserves the right, by giving notice to the Client at any time before performance of the relevant Services to increase the price of such Services to reflect any increase in the cost to the Service Provider which is due to an act or omission of the Client including but not limited to any change in the date for the performance of Services or any delay caused by a or failure by the Client to give the Service Provider adequate information or instructions.
- 8.8 The Service Provider has the right to vary the rates specified in the Schedule and to increase the Charges at any time after the first anniversary of the Effective Date by providing written notice to the Client at least ninety days prior to the date on which the increase is due to take effect provided that the Service Provider shall not increase the rates more than once in any 12 month period. Any such increases shall not exceed the greater of 5% or a percentage equal to the percentage increase in the UK Wages and Salaries Survey, published by the Office of National Statistics (or any other index of prices as the Service Provider and the Client may agree) during the period since the last such increase or, on the first such increase, since the date of this Agreement.
- 8.9 In the event of early termination of this Agreement by the Client then the Client agrees to bear the cost of any notice period.

9 Liability

- 9.1 Nothing in the Agreement shall exclude or restrict either party's liability for:

- 9.1.1 fraud;
- 9.1.2 death or personal injury resulting from the negligence of a party or its employees while acting in the course of their employment;
- 9.1.3 breach of the confidentiality obligations in Clause 13; or
- 9.1.4 any other liability that cannot be limited or excluded by law;
- 9.1.5 and in the case of the Service Provider, breach of the Service Provider's obligations in respect of Data Protection in Clause 10.
- 9.2 Subject to Clause 9.1, either party's liability to the other in contract, tort (including negligence), misrepresentation (whether innocent or negligent), breach of statutory duty or otherwise arising out of or in connection with the Services, or other performance or non-performance of either party's obligations under the Agreement shall:
 - 9.2.1 be limited to the aggregate of the Charges under the Agreement for the preceding twelve months in respect of any one incident or any series of incidents arising from a common cause in any one year;
 - 9.2.2 not extend to any:
 - loss of profits;
 - loss of revenue;
 - loss of business;
 - loss of goodwill;
 - loss of contracts;
 - loss of anticipated savings;
 - loss of production;
 - loss of or corruption to data, or
 - any special, indirect or consequential loss or damage whatsoever

9.2.3 provided that the Service Provider shall not be liable to the Client or be deemed to be liable:

- (i) for any delay to perform its obligations only to the extent where such delay was due to a failure by the Client to comply with reasonable requests by the Service Provider for instructions, information or action required by the Service Provider to perform its obligations within the agreed time limits;
- (ii) where the Client is in default of its payment obligations under this Agreement and the Service Provider has suspended the provision of the Services pending payment pursuant to clause 8.6.1 or terminated the Agreement pursuant to clause 8.6.3.

10 Data protection

10.1 The parties agree that the Customer is a Controller and that the Service Provider is a Processor for the purposes of processing Protected Data pursuant to this Agreement. The Service Provider shall, and shall ensure its Sub-processors and each of the Service Provider's 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. Nothing in this Agreement relieves the Service Provider of any responsibilities or liabilities under Data Protection Laws.

10.2 The types of Personal Data are names and contact details and the categories are Client representatives and where appropriate/necessary Customers of the Client submitted for the purpose of the provision of the Services.

10.3 The Service Provider shall only process the Protected Data in accordance with the Client's written instructions.

10.4 The Service Provider shall take into account the nature of the processing, implement and maintain appropriate technical and organisational measures to

protect Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

- 10.5** As at the date of this Agreement, the Client authorises the appointment of the Sub-processors notified by the Service Provider to the Client (and the Service Provider's employees) that are subject to an enforceable obligation of confidence with regards to the Protected Data. The Service Provider shall not permit any processing of Protected Data by any sub-contractor or other third party without the Client's prior written consent.
- 10.6** The Service Provider shall remain fully liable to the Client under this Agreement for all the acts and omissions of each Sub-processor and each of the Service Provider personnel as if they were its own.
- 10.7** The Service Provider shall, subject to agreement of reasonable costs, assist the Client in ensuring compliance with the Client's obligations pursuant to Articles 32 – 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to the Service Provider.
- 10.8** The Service Provider shall, subject to agreement of reasonable costs, taking into account the nature of the processing assist the Client (including by taking all appropriate technical and organisational measures) insofar as this is possible, for the fulfilment of the Client's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of Protected Data.
- 10.9** The Service Provider shall record and refer all requests and communications received from Data Subjects or any Data Protection Supervisory Authority to the Client which relate to any Protected Data and shall not respond to any without the Client's express written approval and strictly in accordance with the Client's instructions unless and to the extent required by applicable laws.
- 10.10** The Service Provider shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the United Kingdom or to any International Organisation without the prior written consent of

the Client (which may be refused or granted subject to such conditions as the Customer deems necessary).

10.11 The Service Provider shall maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of the Client and make available to the Client such information as is reasonably required to demonstrate the Service Provider's compliance under this clause 10 and the Data Protection Laws, and permit audits, including inspections, by the Client for this purpose at the Client's request from time to time (maximum of once per 12 months) upon reasonable prior notice.

10.12 The Service Provider shall promptly notify the Client if it suspects or becomes aware of any suspected, actual or threatened occurrence of any Personal Data Breach in respect of any Protected Data.

10.13 The Service Provider shall without delay, at the Customer's written request, either securely delete or securely return all the Protected Data to the Customer in such form as the Customer reasonably requests after the earlier of:

10.13.1 the end of the provision of the relevant Services related to processing of such Protected Data; or

10.13.2 once processing by the **Service Provider** of any Protected Data is no longer required for the purpose of the Service Provider's performance of its relevant obligations under this Agreement, and securely delete existing copies (except to the extent that storage of any such data is required by applicable laws and, if so, the Supplier shall inform the Client of any such requirement).

11 Termination

11.1 Subject to the Dispute Resolution Procedure, either party may without prejudice to its other rights and remedies by notice in writing to the other party immediately terminate this Agreement if the other:

11.1.1 is in material or persistent breach of any of its obligations under this Agreement and either that breach is incapable of remedy or the other shall have failed to remedy that

breach within 20 Business Days after receiving written notice requiring it to remedy that breach; or

11.1.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction.

11.2 In the event of termination for whatever reason of this Agreement, each party shall within (30) days of such termination return (or, at the other party's option, destroy) all Confidential Information in its possession or under its control and all copies of such information.

11.3 Termination of this Agreement for whatever reason shall not operate to affect any provisions that expressly or by implication survive termination.

12 Exit management

12.1 If this Agreement is terminated in whole or in part for any reason the Service Provider shall, subject to payment of reasonable fees notified and agreed in advance with the Client, provide all reasonable assistance to the Client to ensure the orderly migration of the Services or replacement services to the Client or, at the Client's request a new service provider. The remaining provisions of this clause 12.1 shall not prejudice or restrict the generality of this obligation.

12.2 Forthwith on termination of this Agreement, the Service Provider shall return to the Client all Client Materials together with all other materials and assets and other information provided to the Service Provider.

12.3 Where Services provided to the Client are dependent on equipment which is not used exclusively for the provision of Services to the Client (and which are not owned by the Client) the Service Provider will ensure the orderly migration of programs, data and other materials from such equipment to similar equipment owned by the Client or its

new service provider. Implementation of the migration shall be carried out with minimum disruption to the Client.

13 Confidentiality

- 13.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not, without the prior written consent of the other, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.
- 13.2 Each party undertakes to disclose the other party's Confidential Information only to those of its officers, employees, agents, contractors and personnel to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement and to procure that such persons are made aware of and agree in writing to observe the obligations in this Clause 13.2.
- 13.3 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or other loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 13.4 The provisions of this Clause 13 shall not apply to information which:
 - 13.4.1 is or comes into the public domain through no fault of the receiving party, its officers, employees, agents or contractors;
 - 13.4.2 is lawfully received by the receiving party from a third party free of any obligation of confidence at the time of its disclosure;
 - 13.4.3 is independently developed by the receiving party, without access to or use of such information; or
 - 13.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party and affords the other party all such reasonable cooperation and assistance as is required in order to prevent any such disclosure.

13.5 Each party will establish and maintain adequate security measures to safeguard information and data of the other party in its possession from unauthorised access and copying.

13.6 The obligations under this Clause 13 shall survive the variation, expiry or termination of this Agreement.

14 Assignment

14.1 Neither party shall be entitled to assign or sub-licence to any third party any of its rights or obligations under the Agreement without the other party's prior written consent, but the Client shall not be precluded from using the Services for the benefit of its Associates as permitted under the terms of the Agreement.

15 Waiver and variation

15.1 No waiver of any term or condition of the Agreement shall be effective unless made in writing and signed by the party against which enforcement of the waiver is sought. The waiver of any breach of any term of any condition of the Agreement shall not be construed as a waiver of any subsequent breach of a term or condition of the same or a different nature.

15.2 This Agreement may be amended only in writing expressed to amend this Agreement and signed by both parties.

16 Severability

16.1 If any part, term or provision of the Agreement not being of a fundamental nature be held illegal or unenforceable the validity or enforceability of the remainder of the contract shall not be affected.

17 Nature of agreement

17.1 This Agreement constitutes a contract for the provision of services and not a contract of employment. Accordingly, the Service Provider shall be fully responsible for (and shall indemnify the Client and each and every Associate) for and in respect of its employees and Personnel's income tax and National Insurance and Social Security contributions

and any other liability payroll or payroll tax assessment or claim arising from or made in connection with the performance by the Service Provider of its obligations hereunder.

18 Relationship

- 18.1 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided in this Agreement.

19 Non-poaching of staff

Except as otherwise expressly agreed between the parties in writing, neither party shall during the term of this Agreement or for a period of 6 months after completion of the Services directly, by or through itself, its Associates, its agents or otherwise, whether for its own benefit or for the benefit of any other person employ or engage or offer to employ or engage a Restricted Employee of the other party. In the event that either party breaches this clause, the party in breach shall forthwith pay to the other party 20% of whichever is the greater of: (i) the amount paid (or that would have been paid) to the Restricted Employee by the other party during the provision of the Services; and (ii) the amount to be paid (including all bonuses and other emoluments) to the Restricted Employee by the party in breach (or related third party) for the first 12 months of employment or provision of Services.

20 Third party rights

- 20.1 No term of this Agreement is intended to confer a benefit on a third party who is not a party to it and a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. The parties to this Agreement do not require the consent of any third party to terminate, rescind, or agree to any variation, waiver or settlement in relation to it.

21 Force majeure

- 21.1 **Force Majeure** means an event or sequence of events beyond the affected party's reasonable control preventing or delaying it from performing its obligations hereunder

including without limitation an act of god, war, riot, civil commotion, third party strike, lock out, industrial dispute, governmental action, malicious damage, compliance with a law or governmental or regulatory order, rule, regulation, licence or direction, accident, breakdown of plant or machinery, fire, flood and storm.

21.2 A party will not be liable if delayed in or prevented from performing its obligations hereunder due to Force Majeure, provided that it:

21.2.1 promptly notifies the other of the Force Majeure event and its expected duration, and

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

21.3 If, due to Force Majeure, a party:

21.3.1 is or is likely to be unable to perform a material obligation, or

21.3.2 is or is likely to be delayed in or prevented from performing its obligations for a total of 3 months in any 12 months of operation of this Agreement of more than 90 Business Days,

then the parties will, within 20 days, renegotiate the Agreement to achieve, as nearly as possible, its original commercial intent.

22 Notice

22.1 Notices under this Agreement will be in writing and sent to the party's address above. They may be given, and will be deemed received:

22.1.1 by first-class post: two Business Days after posting

22.1.2 by airmail: seven Business Days after posting

22.1.3 by hand: on delivery

22.1.4 by facsimile: when sent provided a successful transmission report from the correct number is produced

- 22.1.5 by e-mail: when sent provided receipt is acknowledged or confirmation is sent by prepaid registered letter sent by post within 24 hours.

23 Change control

- 23.1 Either party may submit at any time a request for Change to the other party.
- 23.2 Where the Service Provider originates a request for a Change, it shall provide with the Change, a Change Control Note.
- 23.3 Where the Client originates a proposed Change, it shall provide the Service Provider with such information (as is within the Client's reasonable control) which the Service Provider reasonably considers is relevant to such Change or may assist the Service Provider in the preparation of the Change Control Note. The Service Provider will provide the Client within 5 days of receiving the request for a Change (or such longer period as may be agreed between the parties) with a Change Control Note.
- 23.4 The recipient of a Change request shall act reasonably and in good faith in deciding whether to accept or decline, but in any event do so within 14 days of receipt indicating acceptance of the Change, or setting out in full its reasons for declining.
- 23.5 Where the Client and the Service Provider agree to implement a Change, the costs of implementing a Change agreed between the parties shall be paid in addition to the Charges for providing the Services except where the parties (acting reasonably) agree in writing that the Change is attributable to some act or default of the Service Provider or the Personnel in which case the Change shall be at the Service Provider's expense.
- 23.6 Neither party shall have any obligations in respect of a Change Control Note unless executed by the Authorised Representatives of each party.
- 23.7 The Service Provider reserves the right at any time to make changes to the Services which are necessary to comply with any applicable safety or other statutory requirement provided that such variation does not materially affect the quality of the Services or the Service Levels.

24 Subcontracting

The Service Provider may perform any or all of its obligations under this Agreement through agents or sub-contractors, provided that the Service Provider shall remain liable for such performance and shall indemnify the Client against any loss or damage suffered by the Client arising from any act or omission of any agents or sub-contractors.

25 Entire agreement

25.1 This Agreement contains the whole agreement between the parties relating to its subject matter and supersedes any prior agreement, representation or understanding between them unless expressly incorporated by reference in this Agreement.

25.2 Each party acknowledges that it places no reliance on, and shall have no remedy in respect of, any representation (whether innocent or negligent) made but not expressly embodied in this Agreement. Nothing in this clause limits or excludes any liability for fraud or fraudulent misrepresentation.

26 Dispute Resolution Procedure

26.1 Before resorting to legal proceedings the parties may (but shall not be obliged to) attempt to settle by negotiations between them in good faith any bona fide dispute out of or in connection with this Agreement. The parties further agree that (provided that both parties consider that such negotiations will be assisted thereby), they will appoint a mediator by mutual agreement, or failing mutual agreement each party will appoint a mediator of their choice and the two appointed mediators will appoint a third mediator to assist them and the parties in such negotiations. Mediation shall take place in London or such other place as the parties mutually agree. Both parties agree to cooperate fully with the appointed mediator (or mediators), provide such assistance as necessary to enable the mediators to discharge their duties, and to bear equally between them the fees and expenses of the mediators, but otherwise each party shall bear their own costs. Unless the parties otherwise agree in writing, if mediation is unable to resolve the dispute within 30 days from the Notice of Breach above then the dispute shall be determined by the courts of England and Wales. The provisions of this clause shall be without prejudice to any other rights or remedies available to either party (including without limitation the right to seek injunctive relief).

27 Governing law and jurisdiction

27.1 The Agreement shall be governed by and construed and interpreted in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.

28 Counterparts

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

AS WITNESS the hands of the duly authorised representatives of the parties the day and year first above written.

The Schedule

Services

Start Date: 1st June 2016

The Services: the provision of a programming team for fixed term contracts.

The Service Levels

The Service Provider offices are open between 9:00 a.m. and 5:30 p.m. from Monday to Friday and staff will be contactable during that time. Members of the team will work for 37.5 hours per week and are expected to be in the office during core hours normally 10am to 4pm or as agreed between the parties from time to time.

(i) progress

The Service Provider shall provide the Client with an iteration report (the "Report") at the completion of each 4 week period. The Report shall contain items that have been worked on or scheduled for commencement and an indication of completion time for each item.

The Service Provider shall use all reasonable endeavours to provide any other reports or indices that might be requested by the Client from time to time to enable the Client to assess progress.

The Service Provider will work with the Client to deliver work items that can be delivered into a production environment.

(ii) acceptance

Upon completion of any item contained within the Report the Client shall be notified and the Client shall notify the Service Provider of any required modifications and the Client shall seek to implement any requested modifications. Acceptance shall be deemed to have occurred upon the expiry of 48 hours from the date of notification of completion or the Client using the item in a live environment and not for testing purposes

(iii) performance

At quarterly intervals the Client and the Service Provider shall meet at the premises of either the Client or the Service Provider and discuss the performance of the Agreement.

Service Provider team members

The Client shall have the right to interview any individual that is to be used as part of the provision of Services in advance and to request that any individuals that are used as part of the provision of Services be changed upon giving 4 weeks prior notice.

The Service Provider shall procure that each of the individuals shall adhere to the Client's information security policy and undergo an induction.

Security

The Client shall not store any information other than on the Client's servers.

Charges:

£xxx,xxx +VAT set up cost

Cost of employees/Contractors plus a management fee invoiceable monthly, payable in arrears within 7 days of invoice.

Due and Payable:

On signature: £xxx,xxx + VAT set up fee upon signature of this Agreement.

The total contract value will be up to £xxx,xxx + VAT

Signatories

SIGNED by the parties on the date above

_____ for and on behalf of Headforwards Solutions Limited by its
authorised signatory

Print Name and Title: Mr Toby Parkins, Director

Date:

_____ and on behalf of XXX Limited by its authorised signatory

Print Name _____

and Title: _____

Date: