

HEADS OF TERMS

This Heads of Terms is made on the date of the last signature below between: **ACF Technologies (UK) Limited (“ACF”)** having their principal office at **2nd Floor Midas House, 62 Goldsworth Road, Woking, Surrey, United Kingdom, GU21 6LQ** with a Registration No. 06460227 (“Supplier”); and **COMPANY** having its principal office at **<ADDRESS>** with a Registration No. **<REGISTRATION NUMBER>** (“COMPANY”)

SUBJECT TO CONTRACT

Supplier and COMPANY are interested in entering into the Proposed Agreement.
This Heads of Terms sets out the principal terms and conditions upon which the Parties agree to enter into the Proposed Agreement.

STATUS of HEADS OF TERMS

The terms in this Heads of Terms are not exhaustive and are expressly ‘**Confidential and Subject to Contract**’ until a final written agreement has been entered into. The terms are not intended to be legally binding between the Parties except where specifically stated.

The Parties agree to negotiate in good faith with a view to signing the final Proposed Agreement.

ESSENTIAL PRE-CONDITIONS TO AN AGREEMENT

Any Proposed Agreement between the Parties is conditional upon:

- The Parties negotiating, drafting and agreeing the satisfactory terms of the Proposed Agreement governed by English and Welsh law;
- The approval of and consent to the Proposed Agreement being given by (i) the Parties (including any necessary internal, board of directors, or partner consents) and any such approvals and consents shall remain in full force and effect until the Agreement is signed.

SERVICES

Appointment/Calendar management software and associated services to manage appointments between COMPANY customers and its customers.

The supplier will meet any performance dates “milestones” for the services (as set out in a plan or as otherwise agreed).

The supplier will perform the services with the best care, skill and diligence in accordance with best practice and use personnel who are suitably skilled and experienced to perform the tasks.

The supplier will ensure the services and any deliverables will conform with all descriptions and specifications as set out in any Agreement and that the deliverables are fit for purpose.

COMMERCIAL TERMS (legally binding)

The initial term will be XX (XX) months.

During the term, COMPANY shall not be excluded from purchasing similar services from another thirdparty provider.

COMPANY will retain appropriate rights for:

- other group companies to be able to take the benefit of any Agreement or, where appropriate, for any Agreement to apply to other group brands.
- Third party service providers or outsource service providers will be granted any necessary rights to access and use licensed software.
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Any Agreement will include a rate card for changes and a process for variations to planned, agreed costs.

Invoices must quote a COMPANY Purchase Order number

COMPANY will pay all valid and undisputed invoices within 30 days of the month end after receipt of invoice.

The supplier will not be able to terminate following COMPANY’s failure to pay a disputed invoice; the invoice will be split and reissued.

COMPANY will retain the ability to withhold payment/part payment when an invoice is in dispute until the dispute is resolved.

If COMPANY is late in making any payment it will pay interest at the rate of 2% per annum above the base rate of the Bank of England.

The supplier will not be permitted to suspend the provision of its services if a payment is overdue.

TERMINATION AND EXIT (legally binding)

COMPANY will be able to terminate the contract for:

- Material breach
- Persistent service failures
- Change of control of the supplier
- A downgrading of a supplier's credit rating or evidence of financial instability
- Any supplier act/omission causing embarrassment or bringing COMPANY into disrepute.

The supplier's termination rights will be by agreement.

Upon termination, if COMPANY has paid a fee in advance for any element of the services, such amount will be refunded pro rata to reflect the period after termination for which COMPANY would not receive the benefit of the service.

Exit Plan – The supplier will provide assistance and support provisions and a defined migration plan to include: dealing with data, licenses, TUPE, reasonable assistance, etc.

Neither party can assign, transfer, novate or subcontract any of its rights or obligations without the prior written consent of the other

SUPPLIERS OBLIGATION:

The supplier will be required to comply with “applicable laws and regulations” and notified “COMPANY policies”, including the following specific policy statements where they appear in the tender document;

- SRM Supplier Policy Statement
- COMPANY Vendor Expenses Policy
- Vulnerable Customers Policy
- Business Continuity / Disaster Recovery Policy
- Compliance Policy statement

Audit rights must be granted to COMPANY and COMPANY's regulators.

The Supplier will supply appropriate management information and a framework for relationship management/regular review meetings.

There will be no remote access to COMPANY's IT systems unless strict controls are accepted by the supplier and Group Information Security approve the provisions in advance.

If a third party has access to COMPANY sites or to COMPANY systems, then they must, as a minimum, comply with COMPANY policies.

The Supplier will have an adequate business continuity and disaster recovery plan in place. It will be available for inspection by COMPANY and be tested at least annually. COMPANY will be informed of any changes to the plan.

The supplier will remain liable for any failure to perform their obligations that could have been avoided by the proper operation of their business continuity and disaster recovery plan.

The supplier will not issue any publicity of any nature or refer to the Agreement (for example in tenders to third parties) without COMPANY's prior written approval.

The supplier shall warrant compliance to the Bribery Act 2010.

There will be no assignment/subcontracting by the supplier without COMPANY's written approval.

The supplier shall remain primarily liable for any sub-contractor's acts or omissions.

Appropriate consideration will be given to TUPE as appropriate, both at commencement and termination.

The supplier will not exclude any terms implied by statute regarding the sale of goods or provision of services.

Confidentiality obligations will survive the termination of any Agreement.

Confidentiality obligations (other than those relating to personal data) will expire 5 years after the termination of any Agreement.

COMPANY will require the supplier to remove an individual member of staff if their conduct is not satisfactory to COMPANY. The supplier will be obliged to provide a suitable replacement as quickly as is reasonably practicable.

The supplier will not vary the terms of any Agreement, the services they provide under the Agreement, or their charges without the client's permission and not outside the agreed Change Control procedure.

Copies of any notices given by the supplier should be addressed to the Head of Legal.

Service Levels and KPIs as appropriate will be agreed with the Supplier.

Reporting against service levels regularly or from time to time will be agreed between the parties.

Appropriate contractual remedies will be agreed which may include service credits, step-in or termination rights for breach and convenience

The supplier will comply and cooperate within COMPANY' Supplier Management (SRM) Framework as and relevant governance appropriate to the relationship.

LEGAL OBLIGATIONS (legally binding)

COMPANY will retain appropriate rights for

- Other group companies to be able to take the benefit of any Agreement or, where appropriate, for any Agreement to apply to other group brands.
- Third party service providers or outsource service providers will be granted any necessary rights to access and use licensed software.

Liability, indemnity and insurance

Indemnities are required by COMPANY for: breach of COMPANY IPR, breach of 3rd party IPR, data protection, confidentiality, fraud, TUPE, regulatory breach, abandonment/deliberate breach.

The supplier's specific obligations should be backed by appropriate insurance.

INTELLECTUAL PROPERTY RIGHTS ("IPR") (legally binding)

There will be no use of COMPANY IPR without COMPANY's written approval. An appropriate license will be granted by COMPANY.

COMPANY will retain ownership of all pre-existing IPR.

With regard to any material created by the supplier in the course of the engagement, any Agreement will state clearly either that:

- the supplier assigns to COMPANY the IPR in all such material; or
- the supplier grants COMPANY a perpetual license to use the material. The license will survive the termination of any Agreement.

COMPANY will require the ability to use the IPR relating to the contract (including for example customer terms and conditions where the supplier produces these, and the products may be taken forward by COMPANY or an alternative supplier).

The supplier may retain ownership of the IPR in any methodology or know how that it uses or creates in providing services to COMPANY, provided that this doesn't restrict COMPANY from using the materials/deliverables it receives under any Agreement.

If the services involve either the licensing of either party's trade mark(s) or the creation of a trade mark (in which case the contract will specify who is responsible for registration/ownership).

DATA (legally binding)

COMPANY may need to include data protection clauses that have been approved by our Information Security team.

Any material changes to data protection clauses proposed by a supplier will need to be discussed and agreed with the Information Security team.

COMPANY will ensure it will have appropriate access to personal data during the contract and on termination.

DISPUTES AND REMEDIES (legally binding)

A suitable escalation and dispute resolution provision will be included in any contract or agreement.

A dispute resolution procedure will provide that, if a dispute cannot be resolved by the parties after it has been escalated through more than one level, the parties will consider mediation before initiating litigation.

COMPANY's remedies will not be exclusive and should not prejudice COMPANY's ability to seek equitable remedies.

In the absence of any agreement or contract COMPANY Purchase Order Terms and Conditions will apply.

Any Agreement will be governed by the law and jurisdiction of England and Wales.

COMMENCEMENT AND SIGNATURE

The agreement in this Heads and Terms will remain in effect until superseded by the Proposed Agreement, notice to terminate negotiations or other equivalent to termination of the agreement in this heads of terms (including the insolvency of one of the Parties or the performance of obligations set out above).

The Parties have signed on the date(s) below:

Signed for and on behalf of **COMPANY**

Name:

Position:

Date:

Signed for and on behalf of **ACF Technologies (UK)
Limited**

Name:

Position:

Date: