



## Recruitment Finance Conditions

### Version 1/2022

These Conditions apply to the Invoice Finance Facilities provided by Sonovate Limited. They form part of the Agreement made with You. These Conditions may be changed by notice sent to You.

#### Assignment of Debts

1. The Agreement will apply to all Debts except Excluded Debts.
2. On the Commencement Date, You assign to Us the legal and beneficial ownership in respect of each Commencement Debt and every Debt that comes into existence after the Commencement Date until the Agreement is terminated, in each case together with their Related Rights.
3. Title to Commencement Debts and their Related Rights will be assigned and transferred to Us on the Commencement Date. Title to all other Debts and their Related Rights will be assigned and transferred to Us without further formality automatically on their creation.
4. If any Debt or its Related Rights is not or cannot be assigned or transferred to Us by the Agreement, You will hold all of Your rights, title, benefit and interest in the Debt and its Related Rights on trust for Us from the Commencement Date (in case of any Commencement Debts) or from the date of its creation (in case of any Debt that comes into existence after the Commencement Date).
5. We are not obliged to reassign any Debt to You.

#### Extract

6. If We have provided Extract software to You, You have a non-transferable licence to use Extract subject to Our right to suspend or withdraw the use of Extract at any time, without notice.
7. If You have installed Extract software and the Extract software is functioning properly:
  - 7.1 Debts and Dilutions must be Notified to Us by Extract and You will not be required to Notify Debts and Dilutions by any other method unless We tell You to use another means; and
  - 7.2 each transfer of Accounting Data comprising Debts or Dilutions not Notified previously will constitute a Notification by You of the new Debts or Dilutions.
8. On the Commencement Date, Extract will be used to Notify to Us details of all Commencement Debts. Thereafter, Extract will be used to Notify each Debt to Us immediately after its creation.
9. If a Client becomes entitled to a Dilution in respect of any Debt, You will immediately enter details on Your accounts system and Extract will Notify to Us a credit note for the relevant

amount. If We tell You, You must not send any credit note directly to a Client. We may send the credit note to the Client or withhold it.

10. Following each transfer of Accounting Data, details of the Accounting Data received will be available on Sonovate's Portal. Unless You advise Us of any errors, the Accounting Data will be treated as correct and compliant with the representations given by You in the Agreement.
11. You warrant and represent that all Accounting Data transferred to Us using Extract is accurate, correct and current and the details of all Debts comply with all the representations set out in Condition 54.
12. You undertake:
  - 12.1 to download the Extract software when We tell You to do so;
  - 12.2 not to amend any information relating to a Debt that has been Notified, save that if a Client is entitled to any Dilution, the Invoice Value may be changed by the issue of a credit note;
  - 12.3 not to make any alterations to or modifications of the whole or part of the Extract software nor permit any part of the Extract software to be combined with or incorporated into any other programme;
  - 12.4 not to copy, disassemble, de-compile, reverse-engineer or create derivative works based on the whole or any part of the Extract software except to the extent that such activities cannot be prohibited because they are essential for the purpose of achieving interoperability;
  - 12.5 to give Us not less than 8 weeks' notice of any change to Your accounting or operating systems, including any variation to the version of or upgrade to these systems;
  - 12.6 to tell Us immediately if there are any technical or operational difficulties which affect the operation of Extract or of any Accounting Data which is incorrect or the transmission of information which should not have been transferred; and
  - 12.7 to Notify all Outstanding Debts which have not been Notified previously by uploading invoices and/or Time Sheetsevidencing the relevant Debts to Sonovate's Portal at least every seven days in the event that Extract is not being used or is not operating.
13. If You cease using Extract without Our prior written consent, We reserve the right to review and vary any of the terms on which We provide the Invoice Finance Facilities to You.
14. We may terminate Your use of Extract at any time.
15. We will not be liable to You or any Connected Person for any loss arising as a result of the installation of the Extract software on Your accounts system.

#### **Uploading documents**

16. Following each transfer of Accounting Data, You will upload to Sonovate's Portal:
  - 16.1 Time Sheets signed by the relevant Client for each Notified Debt that arises under a Temporary Recruitment Contract;
  - 16.2 a copy of the relevant Recruitment Contract relating to each Notified Debt;
  - 16.3 a copy of the invoice evidencing each Notified Debt (when available); and

- 16.4 a certificate in a form stipulated by Us that identifies each Debt as arising under a Temporary Recruitment Contract or as a Permanent Debt.

### **Funding Limits and Credit Limits**

17. You may request a Funding Limit and a Credit Limit for a Client Using Sonovate's Portal. Your application for a Funding Limit and a Credit Limit should not exceed the maximum amount that is anticipated to be payable by the Client under the relevant Recruitment Contract. We may establish a Funding Limit and a Credit Limit for a Client that are for different amounts. A Debt in excess of a Funding Limit is not eligible for funding.
18. If We notify You of an indicative Credit Limit, the Credit Limit will be confirmed by Us through Sonovate's Portal.
19. We may set, reduce, decline or withdraw a Funding Limit and a Credit Limit or apply conditions to the establishment or continuation of a Funding Limit and a Credit Limit at any time. A reduction or withdrawal of a Funding Limit and a Credit Limit will take effect 28 Business Days after the date We notify You through Sonovate's Portal unless a different effective date is specified in Our notice of reduction or withdrawal.
20. We will tell You through Sonovate's Portal if We are no longer willing to accept the Credit Risk in relation to Debts due by an Approved Client.
21. A Funding Limit and a Credit Limit will be withdrawn automatically (without limitation) if any Approved Debt due by the Approved Client has not been paid in full within 60 days of its Due Date or an Approved Client is or becomes Insolvent.
22. If We withdraw a Credit Limit, all future Debts of the Client will be Unapproved Debts.
23. We will accept the Credit Risk for all Approved Debts. We will not accept the Credit Risk for any Debt or part of a Debt which is an Unapproved or Unprotected Debt.
24. If We reassign an Approved Debt following a Credit Risk Event, You will assist Us in lodging a proof of Debt in the relevant Insolvency Proceedings and recovering any dividend.

### **Purchase Price**

25. The Purchase Price of an Approved Debt is equivalent to the Invoice Value of the Approved Debt (including tax) multiplied by either the Temporary Advance Percentage or the Permanent Advance Percentage, depending on whether the Debt relates to a Temporary Recruitment Contract or a Permanent Recruitment Contract respectively.
26. The Purchase Price of an Unapproved Debt is equivalent to the amount received by Us from the Client in discharge of the Unapproved Debt.
27. The Purchase Price of an Approved Debt arising under:
- 27.1 a Temporary Recruitment Contract will be available for payment to You within 1 Business Day of the transfer of Accounting Data relating to the Approved Debt (subject to Your compliance with Condition 16, including You providing satisfactory evidence that the Approved Client has verified the accuracy of the Candidate's Time Sheet(s)); and
- 27.2 a Permanent Recruitment Contract will be available to be paid to You:
- 27.2.1 by an Advance up to the Permanent Advance Percentage of the relevant Approved Debt within 1 Business Day of the transfer of Accounting Data relating

to the Approved Debt (subject to Your compliance with Condition 16, including You providing satisfactory evidence that the Approved Client has verified the amount due in respect of the Permanent Debt);

- 27.2.2 by a payment equivalent to the lesser of (i) the balance of the Outstanding Approved Debt or (ii) the value of the Remittance tendered by the Approved Client in or towards the discharge of the Approved Debt, within 1 Business Day of clearance of a Remittance tendered by the Approved Client in or towards the discharge of the Approved Debt; or
  - 27.2.3 if the Approved Debt is not paid in full due to a Credit Risk Event, subject to Your compliance with these Conditions, by a payment equivalent to the balance of the Outstanding Approved Debt after deduction of (i) any Advance paid on account of the Purchase Price of the relevant Approved Debt and (ii) the amounts detailed in Condition 30, within 30 days of the date of the Credit Risk Event.
28. The Purchase Price of an Unapproved Debt will be available to be paid to You within 5 Business Days of clearance of the Remittance tendered by the Client in or towards the discharge of the Debt. At Our discretion, We may pay an Advance to You on account of the Purchase Price of an Unapproved Debt that is within the relevant Funding Limit prior to payment by the Client at any time following the issue of the invoice and/or Time Sheet evidencing the Debt. The Advance will be equivalent to the Invoice Value of the Unapproved Debt (including tax) multiplied by either the Temporary Advance Percentage or the Permanent Advance Percentage, depending on whether the Debt relates to a Temporary Recruitment Contract or a Permanent Recruitment Contract respectively.
29. You may request Us to pay the relevant available amount due in respect of the Purchase Price of Approved and Unapproved Debts using Sonovate's Portal not more than once every day. Upon receipt of Your request, subject to Your compliance with the Agreement and Our rights under the Agreement, We will pay the full amount due to You and, at Your direction, to one or more Candidates, within 24 hours of receiving Your request. No interest will be payable to You on any amounts which We may owe You under the Agreement.
30. If an Approved Debt is not paid in full because of a Credit Risk Event, You will indemnify Us for an amount equivalent to the amount of Unprotected Debt in respect of such Approved Debt.
31. If We have paid to You an amount in excess of the Purchase Price of a Debt, the amount overpaid must be repaid immediately and We may deduct the overpayment from other sums due to You.
32. The Purchase Price (including all payments to Candidates) will be paid to You in the currency in which the Debt is invoiced and/or specified on the relevant Time Sheet.
33. You may authorise Us to pay on Your behalf the Candidate's Fees due to a Candidate for the performance of the Candidate's Services under a Temporary Recruitment Contract, at the rate entered by You into Sonovate's Portal subject to:
- 33.1 the relevant Client confirming the validity of the Time Sheet(s) submitted by the Candidate;
  - 33.2 the Debt arising under the relevant Temporary Recruitment Contract being an Approved Debt;
  - 33.3 the Candidate submitting Time Sheet(s) complying with the terms of the relevant Candidate Contract; and
  - 33.4 if payment is being made directly to the Candidate, You have uploaded to Sonovate's Portal full details of the Candidate's name and bank account.

34. Any payment by Us to a Candidate will be in part discharge of the Purchase Price of the relevant Debt.
35. If any payment made by Us to a Candidate on Your behalf subsequently becomes repayable to You, We will assist You in recovering such amount but shall not be obliged to take any action to recover the payment for You.
36. We are not responsible for any PAYE, Income or Corporation Tax or National Insurance Contributions or any other taxes due by Your Candidates in respect of the Candidates' Fees or the performance of the Candidate's Services and We will not provide nor be responsible for any tax advice.

#### **Fees and charges**

37. You will pay the fees and charges detailed in the Proposal.
38. You will pay to Us on demand:
  - 38.1 all bank charges incurred by Us in the negotiation or collection of Remittances (including Remittances in a foreign currency);
  - 38.2 the relevant Payment Fee and all bank charges incurred by Us in relation to making payments to You or a Candidate by CHAPS; and
  - 38.3 the relevant Permanent Debt Collection Fee if You ask Us to collect payment of any invoice evidencing an Unapproved Permanent Debt.
39. You will pay to Us on demand all costs and expenses incurred by Us in connection with:
  - 39.1 any proceedings, arbitration or dispute resolution procedure in which a Client disputes payment of a Debt;
  - 39.2 any amendment of the Agreement requested by You;
  - 39.3 dealing with any Security; and
  - 39.4 enforcing Our rights under the Agreement or any Security.
40. The Purchase Fee will be deducted from each payment of the Purchase Price.
41. The Purchase Fee will be payable by You even if the Client does not make full payment of the Debt.
42. If there is any change in Bank of England base rate, the Purchase Fee will increase or decrease (as appropriate) by 0.1% for every 0.25% change in the base rate (save that there will be no change if base rate reduces below 0.5%).
43. We shall be entitled to renegotiate the Purchase Fee with You if You agree with any Client to extend Your Standard Payment Terms.
44. You will pay interest at the rate of 4% above Bank of England base rate from time to time on all Liabilities due to Us from the date on which the Liability becomes due until the Liability has been discharged in full.

#### **Set-off**

45. We may set off against the Purchase Price of any Debt:

- 45.1 any amount paid by Us to a Candidate for Candidate's Services;
- 45.2 all fees and charges due under the Agreement;
- 45.3 any Reserve; and
- 45.4 all Liabilities.

#### **Collection of Debts**

- 46. You are not entitled to collect Debts following their assignment to Us (except at our request).
- 47. You will, if requested by Us, assist Us in the collection of Debts and provide to Us all relevant evidence that We may require (including the oral evidence of Candidates and other witnesses).
- 48. We may contact both the Candidate and the Client to verify the terms of a Recruitment Contract.
- 49. We will not tell Clients of the assignment of Debts unless a Termination Event occurs or We decide that it is necessary or desirable to disclose, perfect or enforce Our ownership of a Debt and until notice of assignment of any Debt is communicated to a Client, You authorise Us to collect Debts in Your name.
- 50. We will open a Remittance Account for each currency in which Debts are denominated. The Remittance Account will be in Your name but We will have sole control of and mandate over each Remittance Account. When we open a Remittance Account, we act as an Agent for an Electronic Money Institution (EMI) that is authorised by the Financial Conduct Authority under the Electronic Money Regulations 2011 – see [sonovate.com/payrnet-terms/](http://sonovate.com/payrnet-terms/) for full terms.
- 51. Details of the relevant Remittance Account must be printed on all Your invoices. You must ensure that Clients pay all Remittances to Us or to the relevant Remittance Account.
- 52. Unless a Client allocates a Remittance received by Us against a specified Outstanding Debt, We shall be entitled to appropriate the Remittance against any Outstanding Debt due by the Client.

#### **Remittances received by You and Trusts**

- 53. If You receive a Remittance tendered in payment of a Debt:
  - 53.1 You must deliver the original Remittance to Us or pay it into the relevant Remittance Account; and
  - 53.2 You will hold the Remittance on trust for Us and keep it separate from Your own monies.

#### **Warranties and representations**

- 54. You warrant and represent to Us that:
  - 54.1 the terms of each Temporary Recruitment Contract:
    - 54.1.1 provide for payment of the Candidate's Services by reference to the hours worked by the Candidate;

- 54.1.2 do not require You or the Candidate to complete the performance of any obligations (other than the performance of the Candidate's Services) before payment for the Candidate's Services becomes due; and
- 54.1.3 stipulate that the Client will make payment for the Candidate's Services at the rate(s) agreed in the Temporary Recruitment Contract by reference to the Time Sheets verified by the Client;
- 54.2 each Permanent Recruitment Contract:
  - 54.2.1 specifies the amount of the Introduction Fee;
  - 54.2.2 details clearly the terms on which any rebate or other Dilution may become payable to the Client.
- 54.3 each Recruitment Contract:
  - 54.3.1 does not prohibit or require consent for the assignment of any Debt arising under it;
  - 54.3.2 does not contain any provision which would materially impact on Our ability to collect payment of the full amount of any Debt; and
  - 54.3.3 contains provisions that are generally accepted in standard contracts of Irish recruitment agencies.
- 54.4 all details provided by You to Us in relation to each Client, Candidate and Recruitment Contract are accurate and complete;
- 54.5 each Time Sheet submitted by You as evidence of the performance of a Candidate's Services is accurate and complete;
- 54.6 invoices raised to Clients
  - 54.6.1 accurately reflect the terms of the relevant Recruitment Contract and the Time Sheet(s) verified by the Client;
  - 54.6.2 evidence undisputed and enforceable Debts due by the relevant Client; and
  - 54.6.3 will be paid without retention, set-off, deduction or counterclaim;
- 54.7 each Debt is:
  - 54.7.1 owned by You;
  - 54.7.2 not subject to any Security;
  - 54.7.3 payable under a Recruitment Contract governed by Irish Law;
  - 54.7.4 not an Excluded Debt; and
  - 54.7.5 assignable without restriction; and
- 54.8 no Time Sheet will be verified by You, the Candidate to which it relates or another Candidate.
- 55. You warrant that You have disclosed and will disclose to Us every fact which may influence Us to enter into or continue the Agreement or purchase a Debt.

## Undertakings

56. You undertake that You will:
- 56.1 not grant Security to any person or enter into any agreement for the financing of Your book debts without Our prior written consent;
  - 56.2 issue and send to the relevant Client an invoice evidencing a Debt and will enter details of the invoice on Your accounts system within seven days of completion of each Recruitment Contract or, if the Recruitment Contract provides for periodic or stage payments, of each stage of the Recruitment Contract;
  - 56.3 not send any credit note in respect of a Debt to a Client if We have told You not to do so;
  - 56.4 notify Us immediately of any cancelled or variation made to any Recruitment Contract or change to Your Standard Payment Terms and will not make any material changes to any Recruitment Contract or Your Standard Payment Terms without Our consent;
  - 56.5 promptly pay to a Client any rebate or refund due to the Client in connection with a Permanent Debt and, if requested by Us, procure the written agreement of the Client to pay any Debt without deduction or set-off in respect of such rebate or refund;
  - 56.6 if requested by Us, take any action and sign any documents to preserve Our interest in the Debts;
  - 56.7 tell Us immediately if You are or become aware of:
    - 56.7.1 a dispute with a Client;
    - 56.7.2 a Client requesting an extension of the Due Date;
    - 56.7.3 a change in a Client's creditworthiness or a Client becoming subject to any Insolvency Proceedings;
    - 56.7.4 a Client being entitled to make any deduction from a Debt;
    - 56.7.5 Your being indebted to a Client;
    - 56.7.6 the occurrence of any Termination Event; or
    - 56.7.7 any change in the management or control of Your business.
  - 56.8 if requested by Us, provide to Us and file in Sonovate's Portal:
    - 56.8.1 evidence of the formation and performance of a Recruitment Contract; and
    - 56.8.2 copies of licences and insurance policies necessary for You to carry on business as a recruitment agency.
  - 56.9 allow Us access to Your business premises to inspect and take copies of any documents relating to Recruitment Contracts and Debts, subject to Our providing not less than 7 Business Days' written notice of the exercise of Our rights under this Condition 56.9;
  - 56.10 be responsible for the acts and omissions of Candidates and each Candidate's performance of and compliance with the terms of the relevant Recruitment Contract, unless liability of the performance is excluded within the Recruitment Contract;



- 56.11 be responsible for ensuring the complete performance of each Recruitment Contract relating to a Debt;
- 56.12 remain liable for all Candidates' Fees due by You to Candidates following their performance of a Temporary Recruitment Contract;
- 56.13 ensure that You comply with the Data Protection Acts 1988 to 2018 and the GDPR (each as amended or replaced), or equivalent legislation in any other relevant country, when transferring information to Us;
- 56.14 be solely responsible for the content of any information (including any data about any Client or Candidate) provided to Us, including through Sonovate's Portal;
- 56.15 comply with any reasonable procedures relating to the performance of the Agreement requested by Us;
- 56.16 comply with all applicable laws and regulations (including relevant tax obligations) and maintain all licences necessary for You to carry on business as a recruitment agency in any country in which a Client uses the Candidate's Services;
- 56.17 maintain all necessary, appropriate and adequate insurance cover for Your business, including (without limitation) suitable public liability, employers' liability and professional indemnity policies;
- 56.18 carry out appropriate pre-employment checks and only engage or introduce Candidates who have a legal right to work in the country where the Candidate's Services are to be performed or the Candidate is to be employed pursuant to a Permanent Recruitment Contract;
- 56.19 comply with the Employment Permits Acts 2003 to 2014, and any other relevant Irish legislation or equivalent legislation in the relevant jurisdiction as well as any regulations relating to the employment of foreign workers;
- 56.20 take all reasonably practicable steps to ensure that the Candidate is suitable to perform the Candidate's Services or to work in the position for which the Candidate has been introduced;
- 56.21 comply with all relevant provisions of the Protection of Employees (Temporary Agency Work) Act 2012 (as amended);
- 56.22 tell Us immediately if:
  - 56.22.1 a Candidate is unable or unsuitable to perform the Candidate's Services, the Client expresses dissatisfaction with the performance of the Candidate's Services or refuses to sign a Candidate's Time Sheet;
  - 56.22.2 a Candidate is unable or unsuitable to work in the position for which the Candidate has been introduced or a Client expresses dissatisfaction with the Candidate's performance of his employment contract; and
- 56.23 for every Candidate that is to be paid by Us, ensure that the terms of each Candidate Contract stipulate that the Candidate will:
  - 56.23.1 accept payments of the Candidate's Fees made by Us on Your behalf in discharge of sums due by You under each Candidate Contract; and
  - 56.23.2 acknowledge that We are not responsible for any PAYE, Income or Corporation Tax or Pay Related Social Insurance or any other taxes due by a Candidate.

## **Recourse**

57. We may exercise Recourse in respect of:
- 57.1 an Approved Debt or part of an Approved Debt that is subsequently designated by Us as an Unapproved Debt; and
  - 57.2 an Unprotected Debt that remains Outstanding (i) following the occurrence of a Credit Risk Event or (ii) at the expiry of 60 days after its Due Date or (if earlier) following the withdrawal of a Funding Limit.
58. Following our exercise of Recourse, we will reassign a Debt to You only after the relevant Outstanding amount has been paid.

## **Indemnity**

59. You indemnify Us against:
- 59.1 all Liabilities (including amounts repayable as a result of Us exercising Recourse) and Dilutions;
  - 59.2 any amount paid by Us to a Candidate for the Candidate's Fees, comprising part payment of the Purchase Price of an Unapproved Debt in respect of which We have exercised Recourse;
  - 59.3 all loss, costs and expenses (including amounts paid by Us to Candidates) incurred by Us in discharging Your contractual obligations under a Recruitment Contract;
  - 59.4 the cost of collecting Debts (including the cost of Our employing any third party to collect Debts and all legal costs and expenses on a full indemnity basis); and
  - 59.5 any infringement by You of any intellectual property rights owned by Us including (without limitation) patents, trademarks, registered designs, domain names, computer software and programs, websites and instruction manuals.

## **Period of the Agreement**

60. The Agreement begins on the Commencement Date and continues until terminated by either party giving written notice of not less than 90 days ending on a Sunday.
61. You may immediately terminate the Agreement if:
- 61.1 We commit a material breach of the Agreement which is not remedied within 14 days of You delivering notice to Us of the breach; or
  - 61.2 We become Insolvent.

## **Termination Events**

62. We may immediately terminate the Agreement on or following:
- 62.1 a breach by You of this Agreement which is not remedied within 14 days of Us delivering notice to You of the breach;
  - 62.2 You becoming Insolvent;
  - 62.3 the termination of a guarantee of Your Liabilities or the termination of a waiver, consent or priority arrangement provided to Us in relation to any Security;

- 62.4 the revocation of Your licence to carry on business as a recruitment agency or the cancellation of any public liability, employers' liability or professional indemnity policy covering Your business;
- 62.5 the commission by You of any offence of money laundering or any transaction giving Us grounds to suspect that You are engaged in money laundering;
- 62.6 the disqualification of any of Your directors from acting as a director;
- 62.7 if You cease using or prevent Us from using Extract without Our prior written agreement; and
- 62.8 any other circumstances which cause Us to believe that Your obligations or Liabilities to Us will not be met.

### **Consequences of a Termination Event and termination**

- 63. On or following the occurrence of a Termination Event, We may:
  - 63.1 withhold any payment due to You;
  - 63.2 at our discretion (subject to ongoing review), make a Reserve;
  - 63.3 terminate the Agreement immediately by notice to You and demand immediate payment of all Liabilities; or
  - 63.4 (without terminating the Agreement) demand immediate payment of all Liabilities; and
  - 63.5 tell each Client of the assignment to Us of all Outstanding Debts.
- 64. The termination of the Agreement will not affect Our rights arising under the Agreement in respect of any Debts which were created before the date of termination and any rights, claims, indemnities or other protections in Our favour in respect of such Debts shall continue to have full force and effect.

### **Limitation of liability**

- 65. We will not be liable to You for any loss (including indirect or consequential loss and loss of profit) arising as a result of:
  - 65.1 any unforeseeable event or cause beyond Our control; or
  - 65.2 recommendations made by Us in relation to the terms of Your Recruitment Contracts.
- 66. We do not exclude liability for death or personal injury caused by Our negligence.
- 67. Any claim against Us under the Agreement must be commenced within 2 years of the event which gave rise to the claim and will be limited to the aggregate of Purchase Fees paid by You in the 12 months preceding the event giving rise to the claim.

### **Variations of the Agreement**

- 68. We may change any term of the Agreement by giving You not less than 30 days' notice.

### **Disclosure of information**

- 69. You authorise Us to disclose any information about the Agreement to the following parties (together, "**Permitted Disclosees**"):

- 69.1 to Candidates and Clients in the performance of this Agreement;
- 69.2 to Our and Your professional advisors;
- 69.3 to Our successors or assigns;
- 69.4 to Our funders and their professional advisors and Our successors' and assigns' funders and their professional advisors;
- 69.5 to any third parties retained by Us or by Our successors and assigns to provide services in relation to the Debts and this Agreement;
- 69.6 to any person as may be necessary to enforce Our rights or perform Our obligations (or the rights and obligations of Our successors or assigns) in respect of the Debts or under this Agreement; or
- 70. to any person as may be required by law or regulation.

#### **Novation and assignment**

- 71. You must not assign or delegate Your rights and/or obligations under the Agreement without Our prior written consent.
- 72. We may allow another person to take over any of Our rights and/or obligations under the Agreement (including the assignment of Our rights under the Agreement and/or the transfer of any or all of Our obligations under the Agreement to any person) without any notice or requiring any consent from You.

#### **Set-off**

- 73. All payments due by You to Us must be made without any deduction or set-off.
- 74. We may at any time set off any Liabilities against any amount We may owe to You.

#### **Sonovate's Portal**

- 75. In consideration of Your agreeing to abide by the terms of this licence and the Agreement, We grant to You a non-exclusive and non-transferable licence to use Sonovate's Portal for the duration of the Agreement (subject to Condition 79). Sonovate's Portal and all its content (including Software) and intellectual property rights belong to Us or Our suppliers and You have no rights in or to Sonovate's Portal, other than the right to use Sonovate's Portal in accordance with the terms of this licence.
- 76. You will use Sonovate's Portal for the purposes of the Agreement in accordance with the procedures We notify to You from time to time.
- 77. You will keep confidential all user identification and passwords and prevent access to Sonovate's Portal by unauthorised persons.
- 78. You will ensure that Sonovate's Portal is only used by persons authorised by You.
- 79. We may suspend Your use of Sonovate's Portal without notice on or following the occurrence of a Termination Event. The licence will terminate automatically on termination of the Agreement.
- 80. You may not:

- 80.1 copy the Software, except where such copying is incidental to the normal use of the Software or where it is necessary for the purpose of back-up or operational security;
  - 80.2 without Our written consent, make alterations to or modifications of the whole or part of the Software;
  - 80.3 disassemble, de-compile, reverse-engineer or create derivative works based on the whole or any part of the Software except to the extent that such activities cannot be prohibited because they are essential for the purpose of achieving interoperability;
  - 80.4 use the Software for Your own internal data processing or for any commercial or production purposes;
  - 80.5 remove or modify any Software markings or any notice of Our proprietary rights;
  - 80.6 make the Software available in any manner to any third party;
  - 80.7 use the Software to provide third party training;
  - 80.8 assign this Licence to give or transfer the Software or an interest in them to another individual or entity; or
  - 80.9 disclose results of any Software benchmark tests without Our prior consent.
81. We do not warrant that:
- 81.1 Your use of Sonovate's Portal will be uninterrupted;
  - 81.2 information on the Sonovate's Portal will be accurate, correct and up to date;
  - 81.3 Sonovate's Portal will be free from viruses, hacking or other security intrusion.

### **Data Protection**

82. You acknowledge and agree that We are the Controller in relation to the Personal Data that is the subject of the Agreement. You warrant that You have a lawful basis to disclose such Personal Data to Us, have obtained all necessary consents, where appropriate, and have provided appropriate transparency information to Candidates and Clients in accordance with Data Protection Law.
83. You acknowledge that We may retain other parties to provide services to Us, such as data hosting services, and our successors and assigns may also employ third parties to provide services in relation to the Debts and their rights and obligations under the Agreement. These parties (as Permitted Disclosees) may be given access to data You have provided to Us (including data about Clients and Candidates) in order to perform their services but they will be prohibited from using such data for any other purpose.
84. You may extract and delete data We hold on Sonovate's Portal at any time and upon termination of the Agreement, We will delete all data, including any cached or back-up copies, except in each case if its retention is required by law or to enable Us to enforce any rights or comply with any obligations in respect of the Debts or under the Agreement. You agree that We are not obliged to hold, export or return any data following the termination of the Agreement and We have no liability to You for deleting data pursuant to the Agreement.

### **Confidentiality**

85. Neither You nor We shall during or after termination of this Agreement, without the prior written consent of the other party, use or disclose to any other persons any Confidential Information of the other party except to Permitted Disclosees.
86. Each of Us shall on demand and on termination of this Agreement surrender to the other party all materials relating to such Confidential Information in its possession except if its retention is required by law or to enable Us to enforce any rights or comply with any obligations in respect of the Debts under the Agreement.

#### **Miscellaneous**

87. Any statement or accounting record sent by Us to You or made available through Sonovate's Portal shall be treated as correct and binding on You except for manifest errors or errors in law or any error notified by You to Us within 14 days of the date of the document.
88. A certificate signed by a director of Ours as to the cause, existence and amount of any Liabilities is conclusive except in the case of an obvious error or on any question of law.
89. We may rely on any signature, act or communication sent by a person purporting to be authorised to act on Your behalf even if that person lacked the relevant authority.
90. A reference to the Agreement refers to the Agreement as it may from time to time be varied, novated, assigned or replaced from time to time.
91. A reference to We, Us or Our includes Our successors and assigns (but only to the extent that any rights and/or obligations under this Agreement have been assigned or transferred to such persons).
92. The singular includes the plural and vice versa.

#### **Notices**

93. We may deliver any notice or communication to You in person, by post or email or through Sonovate's Portal at:
  - 93.1 Your contact details last known to Us; or
  - 93.2 Your registered office.
94. A notice or communication by Us will be deemed given:
  - 94.1 if delivered in person, at the time of delivery;
  - 94.2 if by post, on the day after posting;
  - 94.3 if by email or through Sonovate's Portal, at the time of sending.
95. You must serve any notice on Us in writing to Our address on the Proposal or via email to your Relationship Manager at Sonovate. Service will be effective when the notice is received by Us.

#### **Execution - Electronic originals**

96. You and We each:

- 96.1 consent to the execution by or on behalf of each other party to this Agreement, and the witnessing thereof, by electronic signature, provided that such method of execution is permitted by law;
- 96.2 agree that an executed copy of this Agreement may be retained in electronic form; and
- 96.3 acknowledge that such electronic form shall constitute an original of this Agreement and may be relied upon as evidence of this Agreement.

## Law

97. The Agreement is governed by Irish law and the Irish courts have exclusive jurisdiction to determine any dispute or claim relating to the Agreement or its formation (including non-contractual disputes or claims).

## Complaints

98. If You consider that We have treated You unfairly, please submit Your complaint in writing to Us at Our address on the Proposal.

## Definitions

<b>Accounting Data:</b>	Details of all information held on Your accounts system relating to Your purchase, sales and general ledgers.
<b>Advance:</b>	An initial payment on account of the Purchase Price of a Debt.
<b>Advance Percentage:</b>	The percentage of the Invoice Value of an Approved Debt that We will use to calculate the amount of an Advance.
<b>Approved Client:</b>	A Client for whom We have established a Credit Limit.
<b>Approved Debt:</b>	An undisputed Debt due by an Approved Client in respect of which all warranties and undertakings set out in the Agreement have been complied with which is within the Credit Limit set for the relevant Approved Client.
<b>Business Day:</b>	A day (other than a Saturday or Sunday) on which banks are open for business in London or Dublin.
<b>Candidate:</b>	A person introduced by You to a Client (including an officer or employee of the Candidate if the Candidate is a company or Limited Partnership) to either (i) undertake Candidate's Services for the Client or (ii) to work for the Client on a permanent basis.
<b>Candidate Contract:</b>	A contract between a Candidate and You containing the terms on which the Candidate will provide Candidate's Services to a Client.
<b>Candidate's Fees:</b>	The fees payable by You to a Candidate under a Candidate Contract for the provision of Candidate's Services to a Client.
<b>Candidate's Services:</b>	The services performed by the Candidate as a temporary worker under a Temporary Recruitment Contract.

<b>Client:</b>	The party who has incurred a Debt due under a Recruitment Contract.
<b>Commencement Date:</b>	The date on which We make an initial Advance or other payment in or towards the Purchase Price of Debts to You or to another party on Your behalf.
<b>Commencement Debt:</b>	A Debt Outstanding on the Commencement Date.
<b>Confidential Information:</b>	Any information that relates to Your or Our business that is identified as confidential or is confidential by its nature including (without limitation) the names of Candidates and Clients, pricing policies, trade secrets and know-how.
<b>Connected Person:</b>	In relation to (i) <i>an individual</i> , the individual's husband, wife, civil partner, child, step-child, brother, sister, uncle, aunt, nephew, niece, former husband or wife, relative of the individual's husband or wife, any body corporate of which the individual is a director or member and any employee or partner of that individual or that body corporate; (ii) <i>a body corporate (including a Limited Partnership)</i> , any body corporate of which that body is a director or member, any body corporate in the same group as that body, any employee or partner of that body or of any body corporate in the same group; and (iii) <i>a partnership</i> , any body corporate of which the partnership is a director, any employee or partner in the partnership and any person who is a Connected Person to a partner in the partnership.
<b>Controller:</b>	Controller has the meaning given to that term in the GDPR.
<b>Credit Limit:</b>	The maximum aggregate Invoice Value of Approved Debts due by an Approved Client at any time for which We will accept the Credit Risk.
<b>Credit Risk:</b>	The risk of non-payment by an Approved Client of an Approved Debt which is within the Credit Limit for that Approved Client.
<b>Credit Risk Events:</b>	The non-payment of an Approved Debt (i) within 180 days of its Due Date; or due to (ii) the appointment of an administrator or liquidator, receiver, examiner or trustee in bankruptcy to an Approved Client; (iii) the institution of a judicial or administrative procedure pursuant to which an Approved Client's assets and affairs are made subject to the control or supervision by a court or a person or body appointed by a court or by law for the purpose of reorganisation or liquidation of the Approved Client; (iv) the rescheduling, settlement or suspension of payment of an Approved Client's Debts; (v) the failure by an Approved Client to satisfy a judgment entered against the Approved Client after the execution of the judgment; (vi) the approval of a composition, assignment or arrangement with creditors of an Approved Client; (vii) a general moratorium decreed by the government of the country in which the Approved Client



is incorporated or trading; (viii) political events, economic difficulties, currency shortages or legislative or administrative measures in the country in which the Approved Client is incorporated or trading which prevent or delay the transfer of payment of an Approved Debt; (ix) a generally binding measure taken in the country in which the Approved Client is incorporated or trading which gives the Approved Client a valid discharge of an Approved Debt; (x) the occurrence of war (except between China, France, the UK, the Russian Federation and the United States of America), revolution or riot in the country in which the Approved Client is incorporated or trading; (xi) cyclone, flood, earthquake, volcanic eruption, tidal wave or other forms of natural disaster in the country in which the Approved Client is incorporated or trading; (xii) a measure or decision taken by the government of a foreign country which in whole or in part prevents the performance of a Recruitment Contract or payment of the Approved Debt; or (xiii) the cancellation or non-renewal or an export licence or the introduction of a law which prohibits or restricts the performance of a Recruitment Contract.

<b>Data Protection Law:</b>	Any data protection laws applicable to processing of Personal Data, without limitation, in particular the GDPR, the Data Protection Acts 1988 to 2018 and all privacy, security, and data protection laws of applicable to You or Us pursuant to this Agreement.
<b>Debt:</b>	Any monetary obligation of a Client (including tax) due under a Recruitment Contract together with its Related Rights.
<b>Dilutions:</b>	All credit notes, debit notes, discounts, retentions, rebates, set-off, withholding or other deductions which reduce the Invoice Value of a Debt.
<b>Due Date:</b>	The date on which a Debt becomes payable in accordance with Your Standard Payment Terms.
<b>Excluded Debt:</b>	Any Debt (i) due by a Client who is a Sanctions Target; (ii) due by a Connected Person to You or a Client over whom You have direct or indirect control or in whom You have a direct or indirect interest; or (iii) other Debts specified by Us.
<b>Export Debt:</b>	A Debt due by a Client incorporated or trading outside Ireland.
<b>Extract:</b>	The software by which Accounting Data is transferred to Us from Your accounts system.
<b>Funding Limit:</b>	A monetary limit set by Us to determine the maximum value of Advances We will make in respect of the Outstanding Debts due by a Client.
<b>GDPR:</b>	The General Data Protection Regulation (EU) 2016/679 and Regulation (EU) 2016/679 as it forms part of UK domestic law by virtue of The European Union (Withdrawal) Act 2018, in

each case as amended, varied or substituted from time to time.

<b>Insolvency Proceedings:</b>	In relation to any person (i) the exercise of any distress, seizure, execution, injunction, sequestration, attachment or other legal process against assets; (ii) any proposal or convening of a meeting with a view to a composition, assignment or arrangement with or the granting of a trust deed for creditors; (iii) the presentation of a petition, the commencement of proceedings or the calling of a meeting to pass a resolution for winding up or for a corporate voluntary arrangement or similar procedure; (iv) the appointment of a receiver, statutory receiver, examiner or similar official; (v) the presentation of a petition for protection under section 87 of the Bankruptcy Act, 1988 or the making of an arrangement or a composition for the benefit of creditors (or a class of creditors) whether or not pursuant to the Bankruptcy Act 1988 or the Companies Act 2014; (vi) the service of a statutory demand; (vii) the cessation or threat to cease to carry on business or the suspension of payment of debts; or (viii) the service by the Revenue Commissioners of a notice of attachment pursuant to section 1002 of the Taxes Consolidation Act 1997 or a notice under section 1001 of the Taxes Consolidation Act 1997.
<b>Insolvent:</b>	In relation to any person (i) the inability to pay debts as they fall due within the meaning of sections 590(3) and 570 of the Companies Act 2014; (ii) ceasing to trade; or (iii) if there are any Insolvency Proceedings.
<b>Introduction Fee:</b>	The fee payable by a Client to You under a Permanent Recruitment Contract for the introduction of a Candidate.
<b>Invoice Finance Facilities:</b>	The invoice finance facilities provided by Us to You, as set out in the Proposal.
<b>Invoice Value:</b>	The amount of a Debt (including tax) invoiced to a Client or specified in an approved Time Sheet.
<b>Ireland:</b>	The Republic of Ireland (and for the avoidance of doubt Ireland excludes Northern Ireland).
<b>Liabilities:</b>	Any sum (present, contingent or future) payable by You to Us whether or not under the Agreement, including any amount repayable to Us as a result of Our exercising Recourse or a reduction in the Purchase Price of a Debt.
<b>Limited Partnership:</b>	A Limited Partnership incorporated and registered under the Limited Partnerships Act 1907.
<b>Minimum Retention:</b>	£1,000.
<b>Notification:</b>	The method by which You tell Us of the creation of Debts and advise Us of the issue of credit notes and the existence of other Dilutions and " <b>Notify</b> " and " <b>Notified</b> " will be construed

accordingly.

<b>Outstanding:</b>		The amount of a Debt which is unpaid.
<b>Permanent Advance Percentage:</b>	<b>Advance</b>	The percentage of the Invoice Value of an Approved Debt resulting from a Permanent Recruitment Contract that We will use to calculate the amount of an Advance.
<b>Permanent Debt:</b>		A Debt due in respect of the Introduction Fee for the introduction of a Candidate to a Client which results in the employment of the Candidate by the Client on a permanent basis.
<b>Permanent Recruitment Contract:</b>	<b>Recruitment</b>	A contract between You and a Client pursuant to which a Candidate is introduced by You to a Client and the introduction results in the employment of the Candidate by the Client on a permanent basis.
<b>Proposal:</b>		The proposal in respect of the Invoice Finance Facilities provided by Us to You.
<b>Personal Data:</b>		Personal data has the meaning given to that term in the GDPR.
<b>Public Client:</b>		Any state, government department, local authority, institution or organisation which cannot be declared Insolvent.
<b>Purchase Fee:</b>		The charge for Our purchasing each Debt from You at a discount.
<b>Purchase Price:</b>		The amount payable by Us to You to purchase each Debt calculated in accordance with Conditions 25 and 26.
<b>Recourse:</b>		Our right to require You to indemnify Us for an amount equivalent to the Purchase Price of the Debt paid by Us to You less any Remittance paid in part discharge of the Debt.
<b>Recourse Percentage:</b>		10% of the Outstanding amount of an Approved Debt after deduction of (i) the VAT element of the Approved Debt and (ii) the amount of an Approved Debt which is in excess of the relevant Credit Limit.
<b>Recruitment Contract:</b>		A Permanent Recruitment Contract and/or a Temporary Recruitment Contract.
<b>Related Rights:</b>		Your rights in relation to a Debt or under a Recruitment Contract to (i) interest; and (ii) monies recoverable under an insurance policy or guarantee and indemnity.
<b>Remittance:</b>		Any form of payment tendered by a Client to You, Your agents or to Us in or towards the discharge of a Debt, including monies recovered under a credit insurance policy or a dividend payable in respect of a Debt.
<b>Remittance Account:</b>		Each bank account into which all Remittances must be paid.

<b>Reserve:</b>	An amount retained by Us from the Purchase Price of Debts due to You to cover Dilutions and/or Liabilities.
<b>Sanctions Target:</b>	A person who is domiciled in any country which is subject to a financial sanctions regime or has been designated as a sanctions target by the European Union, the UK or the United States of America.
<b>Security:</b>	Any charge, mortgage, trust, security assignment, set-off right, tracing right or other security interest granted by You in favour of any person.
<b>Software:</b>	The software owned by Us or any holding company or subsidiary of Ours or any third party which is used in the provision of Sonovate's Portal.
<b>Sonovate's Portal:</b>	Our on-line electronic data transmission system.
<b>Temporary Advance Percentage:</b>	The percentage of the Invoice Value of an Approved Debt resulting from a Temporary Recruitment Contract that We will use to calculate the amount of an Advance.
<b>Temporary Recruitment Contract:</b>	A contract between You and a Client pursuant to which a Candidate is placed by You in a temporary or consultancy position with the Client.
<b>Termination Events:</b>	The circumstances detailed in Condition 62.
<b>Time Sheet:</b>	The documentary record submitted by a Candidate of hours worked by the Candidate for a Client under a Temporary Recruitment Contract or, if such documentary record of the hours worked is not immediately available to upload, a statement of work or other suitable evidence of the complete performance of the Temporary Recruitment Contract to a defined stage or milestone detailed in the Temporary Recruitment Contract, as confirmed by the Client.
<b>UK:</b>	The United Kingdom of Great Britain and Northern Ireland and the Channel Islands and the Isle of Man.
<b>Unapproved Debt:</b>	A Debt or part of a Debt (i) which is disputed; (ii) from which the Client makes a deduction for settlement discount, a rebate or retention, withholding tax, tax due under the Construction Industry Scheme or other tax associated with the employment of Candidates or any other lawful deduction; (iii) which does not comply with all warranties and undertakings set out in the Agreement; (iv) due by a Client for whom no Credit Limit is established or the Credit Limit is withdrawn; (v) which is a Commencement Debt whose Due Date has passed at the Commencement Date; (vi) which is not paid because (a) at any relevant time, You do not have the necessary licence or performance of the Recruitment Contract is a breach of any applicable law or regulation or (b) of a nuclear explosion or contamination, whatever its origin; (vii) due by a Client which is a Public Client; or (viii) any other

Debt that is not an Approved Debt.

**Unprotected Debt:**

A Debt or part of a Debt for which We will not accept the Credit Risk, being the sum of: (i) the VAT element of an Approved Debt; (ii) the amount of an Approved Debt which is in excess of the relevant Credit Limit; and (iii) the greater of either (a) the Minimum Retention or (b) the Recourse Percentage which becomes due by You to Us following the occurrence of a Credit Risk Event.