

Terms

This agreement is made on the date on which it has been executed by both parties.

It is agreed:

1. Definitions and Interpretation

In this agreement, the following terms:

"Agreement" means this Agreement and its schedule;

"Consultancy Personnel" means the employees of the Consultancy who will carry out the Services, as set out in the Schedule;

"Services" means the specific services to be provided by the Consultancy to the Client in accordance with this agreement as set out in the Schedule;

"Termination Date" means the date on which this agreement terminates, whether pursuant to clauses 2.1 or 14 of the same;

"Timesheets" means the electronic timesheet system or other such time recording method as may be agreed in writing between the parties in relation to time worked by the Consultancy;

"Transfer Fee" shall have the meaning set out in clause 10.2;

"Sonovate" means Sonovate Limited;

"Subsidiary" and **"Holding Company"** have the definitions given by section 1159 of the Companies Act 2006 (or any statutory modification or reenactment of that Act) but for the purposes of section 1159(1) Companies Act 2006 a company shall be treated as a member of another company if any shares in that other company are registered in the name of (i) a person by way of security (where the company has provided the security); or (ii) a person as nominee for the company; and

"Group" means the Agency and all companies which are for the time being either a Holding Company or a Subsidiary of either the Agency or any such Holding Company, and references to a **Group Company** shall be construed accordingly.

References to the Agency throughout this Agreement shall include any Group Company, if applicable.

Any defined terms not set out above are to be given the meanings set out in the attached Schedule.

2. Term

2.1. This agreement shall commence on the start date set out in the Schedule and shall continue (subject to the provisions of clause 14) until the end date set out in the Schedule without the need for notice, unless previously terminated by either party giving the other the length of notice required by the Schedule in writing.

2.2. This agreement shall cease to have any effect (save as regards clauses 8, 9, 12 and 13) on the Termination Date and, with effect from such Termination Date, the Agency shall have no obligation to provide the Consultancy to the Client and the Client shall have no obligation to provide any further work to the Agency or the Consultancy.

3. Services

3.1. The Client has instructed the Agency to supply the Consultancy to provide the Services.

3.2. The Agency shall engage the Consultancy on behalf of the Client. The Agency shall procure that the Consultancy shall make the Consultancy Personnel available to the Client to provide the Services on the terms and conditions of this Agreement.

3.3. During the term of the Agreement (as set out in clause 2.1) ("**Term**") the Agency shall procure that the Consultancy shall provide the Services to the Client and such other services consistent with the Services as the Client shall from time to time require of the Consultancy.

- 3.4. During the Term, the Agency shall procure that the Consultancy shall provide the Consultancy Personnel (or any Substitute under clause 4.1 as the case may be) to provide the Services for the expected time specified in the Schedule (the "**Working Time**"). The particular days on which the Services are to be provided will be mutually agreed between the parties. Any time worked in excess of the Working Time will be treated in accordance with the overtime arrangements set out in the Schedule.
- 3.5. The Agency shall procure that the Consultancy provides the Services at the location specified in the Schedule or in such places as are necessary for the proper performance of the Services.
- 3.6. The Agency shall procure that the Consultancy (along with the Consultancy Personnel or any Substitute) shall provide the Services with all due care, skill and ability and shall promptly give the Client all such information and reports as the Client may reasonably require in connection with the provision of the Services.
- 3.7. The Agency shall procure that the Consultancy (along with the Consultancy Personnel or any Substitute) shall co-operate with the Client's reasonable instructions and shall agree to observe and comply with the Client's rules, regulations and policies (including without limitation its policies on equal opportunities, harassment and bullying and health and safety) and any relevant legislation affecting or relating to the business of the Client.
- 3.8. The Agency shall procure that the Consultancy agrees on its own part and on behalf of its Consultancy Personnel and any Substitute not to engage in any conduct detrimental to the interests of the Client, which includes any conduct tending to bring the Client into disrepute or which results in the loss of custom or business.

4. Substitute

- 4.1. As at the date of entry into this agreement, the intention is for the Consultancy to provide the Services through the Consultancy Personnel. However, the Consultancy may, if the Consultancy Personnel are unable to provide the Services for any reason, provide the Services through another person engaged by the Consultancy ("**Substitute**") provided that the Substitute is suitably qualified and has the appropriate skills and experience. The Agency shall inform the Client of the identity and qualification of any Substitute which the Consultancy proposes to use to provide the Services. The Consultancy shall remain responsible for the acts or omissions of any Substitute.
- 4.2. If the Consultancy is unable for any reason to perform the Services, the Agency will inform the Client on the first day of unavailability and will take reasonable steps to procure that the Consultancy shall provide a Substitute in accordance with the provisions of clause 4.1.

5. Online Timesheets

- 5.1. The Client agrees to use Sonovate's online portal to complete and verify Timesheets for services completed by Consultancy and to accept invoices generated and sent electronically to the Client.
- 5.2. The Client shall approve the online Timesheets within two working days verifying the number of hours/days worked by the Consultancy during the applicable week. Approval of the Timesheets by the Client is confirmation of the number of hours/days worked by the Consultancy and constitutes acceptance that the Consultancy's services have been provided in accordance with this Agreement. Failure to approve the Timesheet does not waive the Client's obligation to pay the Fee in respect of the hours worked.
- 5.3. If the Client is unable to approve a Timesheet (or other agreed method of verification of hours/days) produced for authentication by the Consultancy because the Client disputes the amount of time claimed, then the Client shall notify the Agency within two working days from presentation of the claimed hours/days for verification and shall co-operate fully and in a timely fashion with the Agency, including providing documentary evidence of the hours/days worked by the Consultancy, to enable the Agency to establish what periods of time, if any, the Consultancy worked.
- 5.4. The Client shall not be entitled to decline to approve a Timesheet on the basis that it is dissatisfied with the work performed by the Consultancy. In cases of unsuitable work the Client should apply the provisions of clause 7 below.

6. Fees

- 6.1. In consideration of the Agency performing its obligations under this Agreement, the Client shall pay the Agency the consultancy fees and any expenses (and any payments with respect to overtime, if applicable) set out in the Schedule ("**Fees**"). The Fees shall be paid to the Agency in accordance with this clause 6.

- 6.2. Following receipt of an invoice pursuant to clause 5, the Client shall pay the Agency any amounts due under this Agreement (including the Fees and any Transfer Fee) in accordance with the payment terms set out in the Schedule.
- 6.3. All amounts payable pursuant to this Agreement are exclusive of any VAT. The Client shall pay VAT at the rate for the time being properly chargeable in respect of the Services.
- 6.4. The Agency reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended or replaced from time to time) on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

7. Unsuitability of the Consultancy

- 7.1. If the Client reasonably considers that the services of the Consultancy are unsatisfactory the Client may terminate the Agreement by directing the Agency in writing to remove the Consultancy immediately. The Agency shall reduce or cancel the Fees to the extent that is reasonable.
- 7.2. The Client shall notify the Agency immediately and without delay and in any event within three hours if the Consultancy or the Consultancy Personnel fails to provide the Consultancy Services or has notified the Client that they are unable to provide the Consultancy Services for any reason. The Agency shall notify the Client immediately if it believes that any Consultancy Personnel or any Substitute is unsuitable.

8. Relationship of the Parties

- 8.1. Nothing in this Agreement is intended to create a partnership, joint venture or legal relationship of any kind between the parties that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other. Except where otherwise expressly provided in this Agreement, neither party shall have authority to make representations, act in the name or on behalf of, or otherwise to bind the other.
- 8.2. For the avoidance of doubt, neither the Consultancy nor the Consultancy Personnel are under the supervision, direction or control of the Agency or the Client, the Client does not have the right to supervise, direct or control the Consultancy or the Consultancy Personnel and no member of the Consultancy Personnel is an agency worker as defined under the Agency Workers Regulations 2010.
- 8.3. Save as otherwise stated in this Agreement, the Agency and the Client acknowledge and accept that the Consultancy is in business on its own account and the Consultancy shall be entitled to seek, apply for, accept and perform contracts to supply its services to any third party during the term of this Agreement provided that this in no way compromises or is to the detriment to the performance of the Consultancy Services.

9. Limitation of Liability and Indemnity

- 9.1. Subject to clauses 9.2 and 9.3, the Agency's entire liability to the Client whether in contract, tort (including negligence or breach of statutory duty) or otherwise, arising out of, or in connection with, this Agreement, shall be limited to the Fees payable under this Agreement.
- 9.2. Subject to clause 9.3, neither Party will be liable to the other for any indirect, consequential or special loss arising out of, or in connection with, this Agreement. The following losses are agreed to be non-exhaustive, direct, recoverable losses under this Agreement:
- 9.2.1 the cost of selecting or procuring alternative or replacement Services or Consultancy;
 - 9.2.2 wasted expenditure;
 - 9.2.3 loss of profits and other economic loss.
- 9.3. Nothing in this Agreement shall operate to exclude or limit any liability which it is not possible to exclude or limit under applicable law.
- 9.4. Notwithstanding the provisions of clause 9.1, the Agency shall indemnify the Client against all loss, damage, expense liability, assessment or claim:
- 9.4.1 for National Insurance contributions, income tax or other taxation obligations where such liability, assessment, or claim arises or is made in connection with payments made by the Client in respect of the Consultancy Personnel while provided as such by the Agency to the Client;
or
 - 9.4.2 arising from any such Consultancy Personnel having at any time claimed to have been an employee of the Client or been otherwise engaged directly by the Client including any claim for wrongful or unfair dismissal; or

9.4.3 arising from the act or omission of the Consultancy Personnel including death or personal injury or loss of theft of property.

10. Transfer Fee

- 10.1. In the event that, during the Term or within a period of six months following the Termination Date, the Client engages or employs the Consultancy or any of the Consultancy Personnel (or Substitute) other than through the Agency, the Client will pay the Transfer Fee to the Agency.
- 10.2. The **"Transfer Fee"** shall be an amount equivalent to the applicable Fees for the provision of the Services in accordance with the Schedule for a period of three months, unless agreed otherwise in writing between the parties.
- 10.3. The Transfer Fee will be payable to the Agency by the Client in accordance with clause 6 of this Agreement.

11. Data Protection

- 11.1. The Client warrants that any personal data relating to the Consultancy whether provided by the Agency or by the Consultancy, shall be used, processed and recorded, whether by the Client or any party the Client allows (or fails to prevent) access to, in accordance with the Data Protection Act 1998 (as amended).
- 11.2. The Client shall indemnify and keep indemnified the Agency against any costs, claims or liabilities incurred directly or indirectly by the Agency arising out of or in connection with any failure to comply with clause 11.1 above.

12. Confidentiality

- 12.1. **"Confidential Information"** means information (whether or not recorded in documentary form, or stored on any magnetic or optical disk or memory) relating to the business, products, affairs and finances of the Client for the time being confidential to the Client and trade secrets including, without limitation, technical data and know-how relating to the business of the Client or any of its or their business contacts.
- 12.2. The Agency shall procure that the Consultancy shall keep all Confidential Information secret and confidential and not to disclose or use the same, save for in accordance with the provision of the Services.
- 12.3. All Confidential Information given by the Client to the Agency, or otherwise obtained or developed by the Agency relating to the Client, shall be kept secret and confidential by the Agency throughout the Term and following its termination or expiry and shall not be used or disclosed other than for the purposes of the proper performance of this Agreement or with the prior written consent of the Client.
- 12.4. The obligations of confidentiality in this clause 12 shall not extend to any matter which the Agency or the Client can show:
- 12.4.1 is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement;
 - 12.4.2 was independently disclosed to it by a third party entitled to disclose the same; or
 - 12.4.3 is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

13. Intellectual Property Rights

The Agency warrants to the Client that it has obtained from the Consultancy a written and valid assignment of all existing and future Intellectual Property Rights in any works or inventions that the Consultancy Personnel may create during the course of the Agreement and of all materials embodying such rights and a written irrevocable waiver of all the Consultancy Personnel statutory moral rights in any such works, to the fullest extent permissible by law.

14. Termination

- 14.1. The Client may, without prejudice to its other rights or remedies, terminate this Agreement with immediate effect by written notice to the Agency if one or more of the following events occurs:

14.1.1. the Agency commits a material breach of this Agreement which is incapable of remedy or is capable of remedy but has not been remedied within thirty (30) days of receipt of a written notice specifying both the material breach and the Client's intention to terminate this Agreement if the material breach is not remedied;

14.1.2. the Agency:

14.1.2.1 enters into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them; or

14.1.2.2 passes a resolution or makes a determination for it to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction); or

14.1.2.3 has a winding-up order or bankruptcy order made against it; or

14.1.2.4 has appointed to it an administrator or administrative receiver; or

14.1.2.5 being a partnership, in addition to the above, suffers bankruptcy orders being made against all of its partners.

14.2. The Agency may terminate this Agreement upon giving written notice to the Client if:

14.2.1 the Client is in wilful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from the Agency to do so; or

14.2.2 the Client fails to pay any amount which is due to the Agency in full and on the date that the payment falls due; or

14.2.3 the Client is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or

14.2.4 an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client; or

14.2.5 an order is made for the winding up of the Client, or where the Client passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement); or

14.2.6 (where the Client is an individual) the Client dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

15. Consequences Of Termination

15.1. Termination or expiry of this Agreement, however caused, shall be without prejudice to any obligations or rights of either of the parties which may have accrued before termination or expiry and shall not affect any provision of this Agreement which is expressly or by implication intended to come into effect on, or to continue in effect after, such termination or expiry.

15.2. Upon the termination or expiry of this Agreement:

15.2.1. each party shall promptly return any property of the other which it has in its possession or control;

15.2.2. the Agency shall, for no charge, co-operate with any transfer of the provision of the Services from the Agency to a third party.

16. Force Majeure

16.1. Neither the Client nor the Agency shall be liable for any breaches of its obligations under this Agreement resulting from causes beyond its reasonable control including but not limited to Acts of God, enemy, fire, flood, explosion or other catastrophe.

16.2. The Client accepts that the Agency shall not be liable for any breaches by the Consultancy of the obligations to the Client under this Agreement resulting from causes beyond the Consultancy's reasonable control including but not limited to Acts of God, enemy, fire, flood, explosion or other catastrophe.

17. Entire Agreement

- 17.1. This Agreement constitutes the entire understanding between the parties concerning the subject matter hereof.
- 17.2. Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to any party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.
- 17.3. Nothing in this clause 17 shall operate to exclude any liability for fraud.

18. Miscellaneous

- 18.1. The Agency shall not assign, transfer or otherwise deal with any of its rights or obligations under this Agreement (save for in relations to debts as set out in the Schedule), or sub-contract the performance of any of its obligations under this Agreement without the prior written consent of the Client, such consent not to be unreasonably withheld or delayed.
- 18.2. No variation or alteration of these terms shall be valid unless approved by the Agency and the Client in writing except where changes to the Services are necessary to comply with applicable safety and other statutory requirements, in which case the Consultancy may make such necessary changes without prior notification to the Client or the Agency.
- 18.3. The Agency operates as an employment business. The Agency shall ensure that at all material times holds a written notification from the Consultancy that, pursuant to regulation 32(9), it has opted out of the of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (SI 2003/3319) as amended by SI 2010/1782.
- 18.4. Any notice given under this agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at its registered office for the time being. Any such notice shall be deemed served when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

19. Rights of Third Parties

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement and no person other than the Consultancy and the Agency shall have any rights under it. The terms of this agreement or any of them may be varied, amended or modified or this agreement may be suspended, cancelled or terminated by agreement in writing between the parties or this agreement may be rescinded, in each case, without the consent of any third party.

20. Law And Jurisdiction

- 20.1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 20.2. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this agreement.

Additional terms

No additional terms