
NOISY ASSOCIATES LTD. TERMS AND CONDITIONS

BACKGROUND:

Noisy Associates Ltd. (the “Service Provider”) provides design and marketing consultancy services to business clients. The Service Provider has reasonable skill, knowledge and experience in that field. These Terms and Conditions shall apply to the provision of services by the Service Provider to its clients.

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Agreement”	means the agreement entered into by the Service Provider and the Client incorporating these Terms and Conditions (or variation thereof agreed upon by both Parties) which shall govern provision of the Services;
“Business Day”	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in the UKMarketing;
“Client”	means the party procuring the Services from the Service Provider who shall be identified in the Agreement;
“Commencement Date”	means the date on which provision of the Services will commence, as defined in the Agreement;
“Confidential Information”	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
“Fees”	means any and all sums due under the Agreement from the Client to the Service Provider, as specified in the Agreement;
“Intellectual Property Rights”	means (a) any and all rights in any patents, trade marks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trade marks and service marks, copyrights, database rights, know-how, rights in designs and inventions; (b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a); (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and (d) the right to sue for past infringements of any of the foregoing rights;

“Services” means the services to be provided by the Service Provider to the Client in accordance with Clause 2 of the Agreement, as fully defined in the Agreement, and subject to the terms and conditions of the Agreement; and

“Term” means the term of the Agreement as defined therein.

- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time;
 - 1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions or to a Clause of the Agreement, as appropriate; and
 - 1.2.5 a "Party" or the "Parties" refer to the parties to the Agreement.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

2. Provision of the Services

- 2.1 With effect from the Commencement Date, the Service Provider shall, throughout the Term of the Agreement, provide the Services to the Client.
- 2.2 The Service Provider shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the Design and Marketing sector in the United Kingdom.
- 2.3 The Service Provider shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the specification of Services provided in the Agreement.
- 2.4 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.
- 2.5 [The Service Provider may, in relation to certain specified matters related to the Services, act on the Client’s behalf. Such matters shall not be set out in the Agreement but shall be agreed between the Parties as they arise from time to time.]
- 2.6 [The Service Provider shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client, subject to the Client’s acceptance of any related reasonable changes to the Fees that may be due as a result of such changes.]

3. Intellectual Property Rights

- 3.1 [The Service Provider shall retain the ownership of any and all Intellectual Property Rights that may subsist in anything produced by the Service Provider in the course of providing the Services. Throughout the Term of the Agreement, the Service Provider shall be deemed to automatically grant a royalty-free, [non-]exclusive licence of any and all such rights to the Client to use the same in accordance with the terms of the Agreement and the Services.
- 3.2 In complying with the provisions of sub-Clause 3.1, the Service Provider shall undertake to execute any such agreements and perform any such actions that may be necessary to put such licences into effect and shall exclusively bear any costs associated therewith.
- 3.3 The Service Provider shall assert all moral rights arising out of Chapter IV of the Copyright, Designs and Patents Act 1988.]

OR

- 3.1 [Upon receipt of all sums due under the Agreement, the Service Provider shall assign the ownership of any and all Intellectual Property Rights that may subsist in anything produced by the Service Provider in the course of providing the Services.
- 3.2 In complying with the provisions of sub-Clause 3.1, the Service Provider shall undertake to execute any such agreements and perform any such actions that may be necessary to put such assignments into effect and shall exclusively bear any costs associated therewith.
- 3.3 The Service Provider shall waive all moral rights arising out of Chapter IV of the Copyright, Designs and Patents Act 1988.]

4. Client's Obligations

- 4.1 The Client shall use all reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the Services.
- 4.2 The Client may, from time to time, issue reasonable instructions to the Service Provider in relation to the Service Provider's provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.
- 4.3 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.
- 4.4 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Client's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).
- 4.5 If the nature of the Services requires that the Service Provider has access to the Client's home or any other location, access to which is lawfully controlled by the Client, the Client shall ensure that the Service Provider has access to the same at the times to be agreed between the Service Provider and the Client as required.
- 4.6 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of Clause 4 of the Agreement shall not be the responsibility or fault of the Service Provider.

5. Fees, Payment and Records

- 5.1 The Client shall pay the Fees to the Service Provider in accordance with the provisions of the Agreement.
- 5.2 The Service Provider shall invoice the Client for Fees due in accordance with the provisions of the Agreement.
- 5.3 All payments required to be made pursuant to the Agreement by either Party shall be made within 30 Business Days of receipt by that Party of the relevant invoice.
- 5.4 All payments required to be made pursuant to the Agreement by either Party shall be made in GBP in cleared funds to such bank in the UK as the receiving Party may from time to time nominate [, without any set-off, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law.]
- 5.5 Where any payment pursuant to the Agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.
- 5.6 Without prejudice to sub-Clause 10.4.1 of the Agreement, any sums which remain unpaid following the expiry of the period set out in sub-Clause 5.3 of the Agreement shall incur interest on a daily basis at 2% above the base rate of Lloyds Bankuo to from time to time until payment is made in full of any such outstanding sums.
- 5.7 Each Party shall be required to:
 - 5.7.1 keep, or procure that there are kept, such records and books of account as are necessary to enable the amount of any sums payable pursuant to the Agreement to be accurately calculated;
 - 5.7.2 at the reasonable request of the other Party, allow that Party or its agent to inspect those records and books of account and, to the extent that they relate to the calculation of those sums, to take copies of them; and
 - 5.7.3 within 90 days after the end of each 12 months, obtain at its own expense and supply to the other Party an auditors' certificate as to the accuracy of the sums paid by that Party pursuant to the Agreement during that 12 months.

6. Liability, Indemnity and Insurance

- 6.1 The Service Provider shall ensure that it has in place at all times suitable and valid insurance that shall include public liability insurance.
- 6.2 In the event that the Service Provider fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client.
- 6.3 The Service Provider's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited to the sum defined therein.
- 6.4 The Service Provider shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by the Service Provider.
- 6.5 Nothing in these Terms and Conditions nor in the Agreement shall limit or exclude the Service Provider's liability for death or personal injury.
- 6.6 Subject to sub-Clause 6.3 of the Agreement the Service Provider shall indemnify the Client against any costs, liability, damages, loss, claims or proceedings arising out of the Service Provider's breach of the Agreement.
- 6.7 The Client shall indemnify the Service Provider against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that

belonging to any third parties appointed by the Service Provider) caused by the Client or its agents or employees.

- 6.8** Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

7. Guarantee

- 7.1** The Service Provider shall guarantee that the product of all Services provided will be free from any and all defects for a period that shall be defined in the Agreement.
- 7.2** If any defects in the product of the Services appear during the guarantee period set out in the Agreement the Service Provider shall rectify any and all such defects at no cost to the Client.

8. Confidentiality

- 8.1** Each Party shall undertake that, except as provided by sub-Clause 8.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of the Agreement and [for up to 5 years] after its termination:

- 8.1.1 keep confidential all Confidential Information;
- 8.1.2 not disclose any Confidential Information to any other party;
- 8.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;
- 8.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
- 8.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 8.1.1 to 8.1.4 of the Agreement.

- 8.2** Either Party may:

- 8.2.1 disclose any Confidential Information to:
 - 8.2.1.1 any sub-contractor or supplier of that Party;
 - 8.2.1.2 any governmental or other authority or regulatory body; or
 - 8.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;

to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 8.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of Clause 8 of the Agreement, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

- 8.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time

after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.

- 8.3 The provisions of Clause 8 of the Agreement shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

9. Force Majeure

- 9.1 No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 9.2 [In the event that a Party to the Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period to be defined in the Agreement, the other Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement.]

10. Term and Termination

- 10.1 The Agreement shall come into force on the agreed Commencement Date and shall continue for a defined Term from that date, subject to the provisions of Clause 10 of the Agreement.
- 10.2 Either Party shall have the right, subject to the agreement and consent of the other Party and exercisable by giving not less than 30 days written notice to the other at any time prior to the expiry of the Term specified in sub-Clause 10.1 of the Agreement (or any further period for which the Agreement is extended) to extend the Agreement for a further period of 12 months.
- 10.3 Either Party may terminate the Agreement by giving to the other not less than 30 days written notice, to expire on or at any time after the minimum term of the Agreement (which shall be defined in the Agreement).
- 10.4 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:
- 10.4.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 30 days Business Days of the due date for payment;
 - 10.4.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 30 days90 days Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 10.4.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
 - 10.4.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

- 10.4.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
 - 10.4.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - 10.4.7 the other Party ceases, or threatens to cease, to carry on business; or
 - 10.4.8 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of Clause 10, “control” and “connected persons” shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 10.5 For the purposes of sub-Clause 10.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 10.6 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

11. **Effects of Termination**

Upon the termination of the Agreement for any reason:

- 11.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;
- 11.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
- 11.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;
- 11.4 subject as provided in Clause 11 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other;
- 11.5 each Party shall (except to the extent referred to in Clause 8 of the Agreement) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information; and
- 11.6 [the Intellectual Property Rights licence granted under sub-Clause 3.1 of the Agreement shall terminate and the Client shall forthwith cease to use, either directly or indirectly, any such Intellectual Property Rights, and shall forthwith return to the Service Provider any such material in its possession or control.]

12. **No Waiver**

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

13. Further Assurance

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

14. Costs

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

15. Set-Off

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

16. Assignment and Sub-Contracting

16.1 [Subject to sub-Clause 16.2] The Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

16.2 [The Service Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of the Service Provider.]

17. Time

17.1 [All times and dates referred to in the Agreement shall be of the essence of the Agreement.]

OR

17.2 [The times and dates referred to in the Agreement shall be for guidance only and shall not be of the essence of the Agreement and may be varied by mutual agreement between the Parties.]

18. Relationship of the Parties

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

19. Non-Solicitation

19.1 Neither Party shall, for the Term of the Agreement and for a defined period (which shall be defined in the Agreement) after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement [without the express written consent of that Party].

19.2 Neither Party shall, for the Term of the Agreement and for a defined period (which shall be defined in the Agreement) after its termination or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party [without the express written consent of that Party].

20. Third Party Rights

20.1 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

20.2 Subject to Clause 20 of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

21. Notices

21.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

21.2 Notices shall be deemed to have been duly given:

21.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

21.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

21.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

21.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

22. Entire Agreement

22.1 The Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

22.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

23. Counterparts

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

24. Severance

In the event that one or more of the provisions of the Agreement and/or of these Terms and

Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

25. Dispute Resolution

- 25.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.
- 25.2 [If negotiations under sub-Clause 25.1 of the Agreement do not resolve the matter within 90 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure.]
- 25.3 [If the ADR procedure under sub-Clause 25.2 of the Agreement does not resolve the matter within 90 days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.
- 25.4 The seat of the arbitration under sub-Clause 25.3 of the Agreement shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.]
- 25.5 Nothing in Clause 25 of the Agreement shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.
- 25.6 The decision and outcome of the final method of dispute resolution under Clause 25 of the Agreement shall [not] be final and binding on both Parties.

26. Law and Jurisdiction

- 26.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 26.2 Subject to the provisions of Clause 25 of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.