

## G-Cloud 11 Melt Content Agreement for Services

### WHEREAS:

Melt has experience and expertise in the development and deployment of content marketing strategies to maximise the reach and effectiveness of web pages, web sites and other computer networks and the Customer wishes Melt to develop and deploy such services as set out in Schedule A of this Agreement (collectively 'the Services') in relation to the website referred to in Schedule B of this Agreement ('the Target Website')

### IT IS AGREED AS FOLLOWS:

#### **1. ENGAGEMENT**

Melt is hereby engaged by the Customer to deliver the Services to the Target Website in accordance with the terms of this Agreement.

#### **2. FEES**

(a) In consideration for the delivery by Melt to the Customer of the Services to the Target Website hereunder, the Customer will pay Melt such fees for Melt's works, time and materials as are specified in Schedule B of this Agreement together with any Value Added Tax chargeable thereon ('the Fees').

(b) Unless expressly agreed by Melt in writing after the date of this Agreement, Melt shall not carry out speculative work for which no fee is payable.

(c) Melt agrees not to carry out any further work in addition to the agreed Services that will incur a further cost to the Customer without the Customer's prior approval in writing, which approval may be in the form of a signed purchase order.

#### **3. PAYMENT TERMS**

(a) The Customer shall pay Fees to Melt in full without deduction within 30 days from the date of an invoice issued by Melt in accordance with the schedule of works as set out in the schedules to this Agreement. Payment by the Customer shall be made direct to the bank account nominated in writing by Melt.

(b) If the Customer fails to make any payment due under this Agreement by its due date, the Customer agrees it will pay interest on the overdue amount at the rate of 5% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment. The Customer shall pay the interest together with the overdue amount.

(c) If the Customer wishes to dispute any invoice or other statement of monies due to Melt, the Customer shall immediately notify Melt in writing setting out its grounds for dispute.

#### **4. INTELLECTUAL PROPERTY**

- (a) Subject to the provisions of this clause 4, Melt shall retain all rights in any source code, original works, files, digital media and other intellectual property owned or licensed by Melt as at the date hereof including Melt's logos, graphics, text, images or other intellectual property owned or licensed by Melt ("Melt's IP").
- (b) The Customer licenses to Melt the right to use any relevant intellectual property belonging to the Customer for the duration of this Agreement only to the extent necessary to allow Melt to carry out its obligation under this Agreement.
- (c) Notwithstanding the provisions of clause 4(a) above, once the Customer has paid all Fees payable hereunder to Melt, any works which are developed or created by Melt for the Customer pursuant to this Agreement shall be licensed in perpetuity to the Customer on a royalty-free basis for use in the Customer's legitimate business.
- (d) Each party warrants that it has used its reasonable endeavours to ensure that all material, content, images and information provided to the other party by itself or by its employees, agents, contractors or sub-contractors is legally owned or licensed.
- (e) Each party agrees to indemnify and hold the other party harmless from any and all claims brought by any third party, including, but without limitation, any and all demands, liabilities, losses, costs and claims including legal fees arising out of any alleged or actual infringement of intellectual property rights hereunder save that if the Customer is required by Melt to sign-off its agreement to the material, content, images and information provided to it by Melt, that such sign-off has the effect of holding Melt harmless from any and all liability in relation to any alleged infringement by the Customer of another's intellectual property rights and the indemnity as aforesaid shall not apply.

#### **5. LIABILITY**

- (a) The Customer acknowledges that whilst Melt shall provide the Services set out in this Agreement, Melt cannot guarantee the results of any particular Service in achieving any desired targets or responses in terms of traffic or sales to the Target Website.
- (b) Melt shall not be liable to the Customer for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.
- (c) Nothing in this agreement shall operate to exclude or limit Melt's liability for death or personal injury caused by its negligence or any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services

Act 1982 or fraud or any other liability which cannot be excluded or limited under applicable law.

(d) Subject to clause 5(d), Melt's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this Agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed that proportion of the Fees paid or payable by the Customer to Melt in that calendar year that relates specifically to the element of the Services provided to the Customer by Melt to which the claim relates and shall never exceed 100% of the amount of such Fees.

## **6. DURATION AND TERMINATION**

(a) This Agreement commences on the [insert dates] [or the date of signature] and may be terminated by either party on three month's written notice.

(b) On expiry or termination of this Agreement, all provisions of this Agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

## **7. CONFIDENTIAL INFORMATION**

(a) Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

(b) 'Confidential Information' shall mean all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or during discussions between the parties), where the information is identified as confidential at the time of disclosure or ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

(c) Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

(d) The obligations set out in this clause shall not apply to Confidential Information which the receiving party can demonstrate:

- i. is or has become publicly known other than through breach of this clause; or
- ii. was in possession of the receiving party prior to disclosure by the other party; or
- iii. was received by the receiving party from an independent third party who has full right of disclosure; or

iv. was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

(e) The obligations of confidentiality in this clause shall not be affected by the expiry or termination of this Agreement.

## **8. ENTIRE AGREEMENT**

(a) This Agreement sets out the entire agreement of the parties in relation to its subject matter and supersedes any prior agreements, quotations, arrangements, representations or understandings relating to the Services to be provided by Melt.

(b) The Customer shall not rely on any statement, representation, quotation, recommendation or advice given by Melt and/or any of its officers, employees, agents or contractors which is not set out specifically in this Agreement.

## **9. FORCE MAJEURE**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

## **10. ASSIGNMENT**

Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

## **11. THIRD PARTY RIGHTS**

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. No one other than a party to this Agreement shall have any right to enforce any of its terms.

## **12. VARIATION**

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **13. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

#### **14. SEVERANCE**

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **15. GOVERNING LAW AND JURISDICTION**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Each party represents and warrants that, on the date first written above that they are authorised to enter into this Agreement in entirety and duly bind their respective principals by their signature below.