

THIS AGREEMENT is made the                    of                    2010

**BETWEEN**

[            ] a [company registered] in [Northern Ireland] with [registered] address [            ]  
(Developer)

**AND**

**MOMENTUM ICT FEDERATION** a company registered in Northern Ireland with registered address at Nisoft House, Ravenhill Business Park , Ravenhill Road, Belfast, BT6 8AW (the **Customer**)

## **1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this agreement (**Agreement**).

**Acceptance** means the date of acceptance as occurs in accordance with clause 2.4.

**Charges** means the Site Development Charges and the Services Charges.

**Confidential Information** has the meaning given in clause 7.1.

**Intellectual Property Rights** means all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trademarks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

**parties** means Developer and the Customer, and **party** means either of them.

**Project Timetable** means the timetable for development and testing of the Site as described in the Specification.

**Services** means the services described at schedule A.

**Services Charges** means the charges as calculated in accordance with clause 3.2.

**Site** means the website detailed found at [*insert URL*]

**Site Development Charges** means the charges payable in accordance with clause 3.1.

**Specification** means the Specification, including the Project Timetable, attached at schedule B.

**Year** means the period of one year from Acceptance, and from each anniversary of that date.

1.2 References to clauses and schedules are references to the clauses and schedules of this Agreement. Words in the singular include the plural and in the plural include the singular. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it. References to **including** and **include(s)** shall be deemed to mean respectively including without limitation and include(s) without limitation.

## 2. SCOPE OF THE PROJECT

### 2.1 Developer shall:

2.1.1 design, develop and deliver the Site in accordance with the Project Timetable to meet the requirements of the Specification; and

2.1.2 provide the Services for the duration of this Agreement.

2.2 The Customer acknowledges that Developer's ability to provide the Services is dependent upon the full and timely co-operation of the Customer.

2.3 Developer shall run such acceptance tests as are reasonably required to test the compliance of the Site with the Specification. The acceptance tests shall be scheduled in accordance with the Project Timetable.

2.4 Acceptance of the Site will occur upon the earlier of:

2.4.1 the Customer's confirmation to Developer of its satisfaction that the acceptance tests demonstrate that the Site operates materially in accordance with, and materially complies with, the Specification; or

2.4.2 the Customer putting the Site to use for the Customer's normal business procedures.

2.4.3 If in the Customer's reasonable opinion the Site does not operate materially in accordance with, or otherwise materially comply with, the Specification, the Customer shall have the right to require Developer to carry out (at its own expense) such remedial work as is reasonably necessary for the Site to achieve Acceptance and to resubmit the Site for testing when it has done so and to allow Developer a reasonable period in which to perform such remedial work and, in the event Developer does not perform such remedial work within a reasonable time and such remedial work relates to material non-compliance with the Specification, the Customer may terminate this Agreement and (in the event that the failure to achieve Acceptance is material) recover all Charges previously paid to Developer under the terms of this Agreement.

2.5 Upon Acceptance, Developer shall provide the Services to the Customer for the duration of this Agreement.

2.6 Developer warrants and represents to the Customer that:

2.6.1 Developer will at all times provide the Services in accordance with good industry practice;

2.6.2 [Developer is a corporation duly organised, validly existing and in good standing under the laws of [Northern Ireland], and has full corporate power and authority to conduct its business as such business is now being conducted and to enter into this Agreement.]  
[*applies if Developer is a corporate entity: alternative warranty to be inserted if Developer is a sole trader*]

## 3. CHARGES AND PAYMENT

3.1 The Customer shall pay Developer the Site Development Charges as follows [*insert payment amounts and provisions here*]

3.2 The Service Charges shall be payable in [four instalments quarterly] in arrears[*insert payment amounts and provisions here*]. [The Service Charges for the first Year are included in the Site Development Charges, and shall not be paid in addition to the Site Development Charges.]

3.3 All Charges are exclusive of VAT, which is payable at the statutory rate.

#### 4. INTELLECTUAL PROPERTY RIGHTS

4.1 Developer hereby assigns to the Customer with full title guarantee, where appropriate by way of present assignment of future rights, all rights, title and interest in any and all Intellectual Property Rights in the Site (**Site Rights**) with effect from the date of execution of this Agreement or, if later, the date on which the Site Rights come into existence. Developer undertakes to waive, or procure the waiver of, any moral rights (or right equivalent thereto in any other jurisdiction) generated by Developer and relating to any and all Site Rights.

4.2 Developer shall, at the Customer's reasonable expense, execute any instruments and take all actions reasonably considered necessary by the Customer to convey or perfect the Customer's ownership of any and all Site Rights and shall assist the Customer in obtaining, defending and enforcing its rights therein.

4.3 Developer undertakes to defend the Customer from and against any and each claim or action that the possession, use, development, modification or maintenance of any Site Right infringes the Intellectual Property Rights of a third party (an **Infringement Claim**) and shall fully indemnify, keep indemnified and hold harmless the Customer from and against any losses, damages, costs (including all legal fees) and expenses incurred in any manner (whether directly or indirectly) by or awarded against the Customer as a result of or in connection with any such Infringement Claim.

#### 5. LIMITATION OF LIABILITY

5.1 Nothing in this Agreement shall operate to exclude or limit either party's liability for death or personal injury caused by its negligence, or any other liability which cannot be excluded or limited under applicable law.

5.2 Neither party shall be liable to the other party for any indirect or consequential loss or damage.

5.3 Subject to clause 5.1, each party's aggregate liability in respect of claims based on events arising out of or in connection with this Agreement, whether in contract or tort (including negligence) or otherwise, shall not in any circumstances exceed two hundred percent of the sums payable by the Customer under this Agreement.

#### 6. TERM AND TERMINATION

6.1 This Agreement shall commence on the date stated at the beginning of this Agreement and shall (subject to earlier termination pursuant to this clause 6) continue for a period of one year from the date of Acceptance and shall continue thereafter for successive twelve month periods. Either party may terminate this Agreement on three month's notice.

- 6.2 Either party may terminate this Agreement immediately at any time by written notice to the other party if:
- 6.2.1 that other party commits any material breach of its obligations under this Agreement which (if remediable) is not remedied within 30 days after the service of written notice specifying the breach and requiring it to be remedied; or
- 6.2.2 that other party ceases to trade (either in whole, or as to any part or division involved in the performance of this Agreement); or becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; or a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that party, or notice of an intention to appoint such a person is given or documents relating to such an appointment are filed with any court; or the ability of that party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that party's creditors accept, by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or any process is instituted which could lead to that party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction).
- 6.3 Clauses 4, 5, 6, 7 and 10 shall survive termination of this Agreement.

## 7. CONFIDENTIALITY

- 7.1 **Confidential Information** means all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to 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.
- 7.2 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.
- 7.3 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.
- 7.4 The obligations set out in this clause 7 shall not apply to Confidential Information which the receiving party can demonstrate is or has become publicly known other than through breach of this clause 7; or was in possession of the receiving party prior to disclosure by the other party; or was received by the receiving party from an independent third party who has full right of disclosure; or was independently developed by the receiving party; or 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.

## 8. NOTICES

- 8.1 Any notice given under this Agreement shall be sent to the addresses detailed above and:
- 8.1.1 in relation to Developer, to: [ ], email: [ ] fax: [ ]

8.1.2 in relation to the Customer, to: [ ], email[ ] fax: [ ].

8.2 A notice is deemed to have been received if delivered personally, at the time of delivery; or in the case of fax or e-mail, at the time of transmission, provided a confirmatory copy is sent by first-class pre-paid post or by personal delivery before the end of the next; or in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting.

## 9. GENERAL

9.1 A person who is not a party to the Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

9.2 Neither Party shall transfer, assign or novate the whole or any part of the Agreement or the benefit of it or any right under it without the prior written approval of the other Party, save that the Customer may novate its rights and obligations under this Agreement to any corporate successor to the Customer's business in the future existing.

9.3 A failure at any time to enforce any provision of the Agreement shall in no way affect the right at a later date to require complete performance of the Agreement, nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself.

9.4 Nothing in this Agreement shall create or shall be deemed to create a partnership or the relationship of employer and employee between the parties.

9.5 Any variation of this Agreement shall be made in writing and executed by the Parties.

9.6 If any provision of this Agreement or part thereof should be found to be invalid, ineffective or unenforceable under any applicable statute or regulation, the remainder of the provisions shall stand in full force and effect.

## 10. LAW

10.1 The Agreement is governed by Northern Irish law.

10.2 All disputes, claims or proceedings between the parties relating to the validity construction or performance of this Agreement shall be subject to the jurisdiction of the courts of Northern Ireland to which the parties hereto irrevocably submit.

## **Schedule A**

### **Maintenance and Support**

#### *1 General Description*

It will be the responsibility of the Developer to source a hosting company or location, and to host the website for the duration of the contract. The hosting company or location must be approved by the Customer.

#### *2 Site Availability*

Target site availability shall be based on a 'Service Uptime' of 99.9%

The Customer will accept a service level agreement from an approved hosting company that matches the desired level of 99.9%, in which case the Developer will not be liable for service failures that occur outside of the Developer's responsibility, so long as the Developer engages with the hosting company to resolve service downtimes in a timely manner.

#### *3 Hosting Capacity*

A traffic/bandwidth estimate will be supplied by the Customer to enable a suitable hosting location to be chosen.

#### *4 Hosting Management*

The Developer will be responsible for maintaining the relationship with the chosen hosting company, and for intervening, at the Developer's expense, should there be technical issues of site availability.

#### *5 Site Statistics*

The Developer should make available, at regular intervals to be decided, basic site statistics to indicate levels of site traffic and bandwidth usage.

#### *6 Portability*

At termination of this Agreement, or in the event that the hosting company fails to deliver a service deemed suitable by the Customer, the Developer must facilitate the porting of the website and supporting structure to such other hosting location as the Customer may reasonably require, in order that the service can continue as before.

## **Schedule B**

### **Specification**

The following specification is a high-level requirements document, outlining the broad areas that require to be addressed within the project.

#### *1 Project Definition*

Phase I of the project will be to fully define the scope of work, using the combined input of the Customer and the Developer. The output of this phase will define the approach to the various elements of the project as outlined below, the extent of deliverables expected and agreed interim timelines.

#### *2 Digital Circle Brand*

Creation of an overall concept for the website, incorporating the existing Digital Circle logo (or otherwise, as agreed), in such a way that can be used in other online or offline forms (for example, banner ads or printed flyers)

#### *3 Static Content Area*

Sections of 'static' content to cover the areas of: Contact Us, About Us – including Aims, Steering Group, Sub Groups, Membership, Benefits

#### *4 News*

An updateable area for Digital Circle news, including provision for images.

#### *5 Membership*

Membership registration (to allow for numerous 'grades' of membership – details to be decided), and a supporting database.

Membership search, with links to member profiles

Membership login to 'protected' areas

#### *6 Member Profiles/Showcase*

An area to allow members to add/update their details and showcase their products/skills etc in such a way that the showcase area is publicly visible and works well to assist in the promotion of same to a wider audience.

Provision should be made for the use of video, screencasts and podcasts in the showcase section.

#### *7 Social media section*

An area that can be used as a social media platform that will facilitate engagement between members themselves, within a protected area, and between members and the 'outside world'.

Ideally, this area will be accessible through mobile devices to help facilitate engagement.

Features should include the usual social media elements such as forums, blogs, events, comments and multimedia (video, screencasts, podcasts etc) postings amongst others.

This area has been deliberately left undefined, and will require further discussion between the Developer and the Customer to define the best approach that can be delivered within the budget and timescales.

### *8 Hosting*

The Developer should make provision for an agreed location to host the Site, and to manage the hosting relationship to ensure, as far as their responsibility allows, that the Site is available to an acceptable level.

The choice of hosting company/location must be agreed by the Customer

### *9 Timelines*

Project kick-off: 9<sup>th</sup> August (estimated)

Main go-live: 31<sup>st</sup> December 2010

Project completion: 31<sup>st</sup> March 2011

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