



Studio Legale SMAF & Associates [S.T.A. - S.A.S]

Società Multiprofessionale Avvocati Fiscalisti

Roma - Milano - Bologna

Law Firm in Italy

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AGREEMENT FOR WEB SITE DESIGN AND DEVELOPMENT SERVICES

XYZ, Inc.

ATTN:

Effective Date:

This Agreement for Web Site Design and Development Services ("Agreement") is made and entered into as of the Effective Date above, between YYY of North America, Inc. ("YYY") acorporation, having offices at , and XYZ, Inc. ("XYZ"), acorporation, having offices at.....

1. DEFINITIONS.

- a. "YYY Virtual Center Application" or "the Application" shall mean an Internet application created for YYY in accordance with the Specifications that provides a virtual buying experience on the Internet for customers.
- b. "YYY Materials" shall mean items set forth in Exhibit 5 as used in YYY Virtual Center Application.
- c. "XYZ Materials" shall mean the items set forth in Exhibit 6.
- d. "Specifications" shall mean the specifications for the YYY Virtual

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Center Application as set forth in Exhibit 9.

e. "Affiliate" of a party shall mean an entity directly or indirectly controlling, controlled by or under common control with that party where control means the ownership or control, directly or indirectly, of more than fifty percent (50%) of all of the voting power of the shares (or other securities or rights) entitled to vote for the election of directors or other governing authority, as of the date of this Agreement or hereafter during the term of this Agreement; provided that such entity shall be considered an Affiliate only for the time during which such control exists, or a YYY dealer ("Center"), or a dealer of an Affiliate ("Affiliate Dealer"). YYY may extend the benefits granted in this Agreement to its Affiliates (for so long as they remain Affiliates), provided that all such Affiliates become bound in writing (for XYZ's benefit) to YYY's obligations under this Agreement and that YYY assumes full responsibility for compliance by such Affiliates with such obligations.

[*] = CERTAIN INFORMATION IN THIS EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.



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2. SCOPE OF SERVICES.

XYZ shall use reasonable efforts to provide, under the provisions of this Agreement, the services that are mutually agreed upon and described on Exhibit 1 (Project Description/Scope of Work). YYY understands that the Application is intended to work with certain YYY Materials and that XYZ's performance is dependent on YYY's delivery of such YYY Materials. Accordingly, YYY will provide XYZ with such YYY Materials and other requested assistance in accordance with the timetable set forth in the Exhibit 5 and any dates or time periods relevant to performance by XYZ hereunder shall be appropriately and equitably extended to account for any delays due to YYY. Subject to the above, XYZ shall use commercially reasonable efforts to adhere to the deadlines, benchmarks and milestones set forth in Exhibit 1.

3. EXHIBITS.

Exhibits are numbered for identification and include a complete description of services to be performed, deliverables or other materials to be produced, the schedule for completion of each of the foregoing, the applicable fixed charges, and any additional terms the parties mutually agree to include. YYY may extend the benefits granted in this Agreement to its Affiliates (for so long as they remain Affiliates), provided that all

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such Affiliates become bound in writing (for XYZ's benefit) to YYY's obligations under this Agreement and that YYY assumes full responsibility for compliance by such Affiliates with such obligations.

4. WORK POLICY/PERSONNEL.

a. Each party will designate a Project Manager to serve as the main contact between them. The scope and specific conduct of XYZ's services, not outlined in an Exhibit, must be coordinated with YYY's Project Manager at all times. XYZ shall also use commercially reasonable efforts to coordinate such efforts with Fallon McElligott's designated Project Manager. XYZ will use its reasonable efforts to ensure the continuity of XYZ's employees assigned to perform services hereunder.

b. On a periodic basis, XYZ will submit written status reports describing its activities during the preceding period, including: the current status of activities (with an explanatory narrative when appropriate). The precise content and format of the status report shall be determined by the parties subsequent to the execution of this Agreement. Upon reasonable request and at YYY's expense, XYZ will meet with YYY management to review the status of XYZ's activities.

c. XYZ personnel will use reasonable efforts to observe and comply

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with YYY's reasonable and standard security procedures, rules, regulations and policies, when working at YYY's site. XYZ will use its reasonable efforts to minimize any disruption to YYY's normal business operations at all times. If necessary, YYY will only provide working space, resources and materials to XYZ. If any XYZ employee performing services on the YYY site is found to be reasonably unacceptable to YYY for any reason, YYY shall be the sole judge as to acceptability of behavior on its site. Unless otherwise agreed to in writing, neither party will solicit the employment of the other party's personnel during the term of this Agreement and for a period of six (6) months thereafter.

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- d. XYZ agrees and represents that it is an independent contractor and its personnel are not YYY's agents or employees for federal tax purposes or any other purposes whatsoever, and are not entitled to any YYY employee benefits. XYZ assumes sole and full responsibility for their acts and XYZ and its personnel have no authority to make commitments or enter into contracts on behalf of, bind or otherwise obligate YYY in any manner whatsoever. XYZ, and not YYY, is solely responsible for the compensation of personnel assigned

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to perform services hereunder, and payment of worker's compensation, disability and other income and other similar benefits, unemployment and other similar insurance and for withholding income and other taxes and social security.

5. ACCEPTANCE.

The YYY Virtual Center Application shall be subject to a verification of acceptability by YYY to ensure that it substantially conforms to the Specifications. If the Application fails to substantially conform to the applicable Specifications, YYY shall notify XYZ, within ten (10) business days after receiving the Application, specifying such failures in sufficient detail to allow XYZ to reproduce them, and XYZ will, at no additional cost, use commercially reasonable efforts to conform the Application to the Specifications and the acceptance/rejection/correction provisions above shall be reapplied; provided that upon the fifth or any subsequent rejection, either party may at any time thereafter, at its option and without obligation or liability of any kind, terminate this Agreement. In addition, XYZ warrants and represents that it will use commercially reasonable efforts to replace or repair any defect, malfunction or problem caused by a failure to conform to the Specifications for a period of one (1) year from the date of delivery of the Application (i.e. completion of Phase 2B).

6. OWNERSHIP.

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- a. As between the parties, XYZ exclusively shall have all right, title and interest (including all patent rights, copyrights, trade secret rights, mask work rights and other rights throughout the world (collectively "Intellectual Property Rights")) in the XYZ Materials and the portions of the Application not owned by YYY as provided below ("XYZ Inventions"). Except as expressly provided in this Agreement, YYY will have no right or license in the foregoing.
- b. As between the parties, YYY exclusively shall have all right, title and interest (including all patent rights, copyrights, trade secret rights, mask work rights and other rights throughout the world (collectively "Intellectual Property Rights")) in the YYY Materials and the portion of the Application specifically and exclusively relevant to YYY products ("YYY Inventions"). Except as necessary to perform its obligations under this Agreement, XYZ will have no right or license in the foregoing.
- c. The parties hereby make any assignments necessary to accomplish the foregoing ownership provisions. Each party has and will have appropriate agreements with all such employees and contractors necessary to fully effect the provisions of this Section 6.

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- i. A party being assigned any proprietary right under this Agreement will have the exclusive right to, and, at such party's expense, the assigning party agrees to assist such party in every proper way (including, without limitation, becoming a nominal party) to, evidence, record and perfect the assignment and to apply for and obtain recordation of and from time to time enforce, maintain and defend such proprietary right.
- d. YYY shall be granted a license to XYZ intellectual property rights incorporated into the Application to the extent necessary to use the Application as contemplated by this Agreement.
- e. YYY further acknowledges that nothing herein shall be construed to restrict, impair or deprive XYZ of any of its rights or proprietary interest in technology or products that existed prior to and independent of the performance of services or provision of materials under this Agreement. In addition, nothing in this Agreement or otherwise shall be construed to prevent XYZ from using general know-how, expertise, skill and understanding possessed prior to or gained during the course of performing services hereunder.
- f. Furthermore, in the event that the XYZ Materials developed or



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created hereunder is software, XYZ will use all commercially reasonable efforts with the intent that (i) any new agreements with third party software developers shall contain provisions which provide that said software shall function in a manner consistent with said software's specifications for a period of time at least one (1) year from the date of acceptance, and that in the event said software does not function in a manner consistent with said specifications, the developer shall use all commercially reasonable efforts to make any and all necessary corrections and modifications during said one year period without cost or charge to YYY, (ii) said agreements shall also contain a representation that any such software shall not have a self help code designed to disable a computer program or an unauthorized code designed to permit access by an unauthorized person to the software to harm the software and (iii) said agreements shall also have a provision that indemnifies both YYY and XYZ for damages in the event that contractor, person or entity developing or creating the software hereunder is in breach of any warranty.

7. TRADEMARKS.

Except for the approved creation, production and publication of the subject matter of the Agreement, XYZ shall not use the trade names, trademarks, service marks, logos, or any other proprietary designations of YYY without YYY's prior written consent.

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8. INTELLECTUAL PROPERTY LICENSE.

a. Subject to all the terms of this Agreement and payment of all fees, XYZ grants YYY a worldwide, perpetual, nonsublicensable, nontransferable right to use the YYY Virtual Center Application in the nonsource code form provided by XYZ only on the number of servers specified in Exhibit 7. Notwithstanding the foregoing, YYY may request any number of additional servers provided it pays the amounts set forth in Exhibit 7 as "Additional per Server Charge". YYY will maintain the copyright notice and any other notices that appear on the Application on any copies and any media. YYY may allow its distributors access to the Application. YYY will not (and will not allow any third party to) (i) reverse engineer or attempt to discover

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any source code or underlying ideas or algorithms of the Application (except to the extent that applicable law prohibits reverse engineering restrictions), (ii) provide, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use a Application for the benefit of any third party, or (iii) use any Application, or allow the transfer, transmission, export, or re-export of any Application or portion thereof in

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violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other government agency.

- b. YYY hereby grants XYZ a worldwide, nonpublicensable, nontransferable license to modify, adapt, and prepare derivative works of the YYY Materials, or have its contractors do so on its behalf, as necessary to develop the Application or any additional work requested by YYY as provided herein and for no other purpose.

9. REPRESENTATIONS AND COVENANTS.

- a. XYZ warrants that the Services provided by it as described in this Agreement will be of professional quality conforming to generally accepted practices governing the development and design of web sites.
- b. In addition to any other express or implied warranty made in this Agreement, XYZ hereby represents and warrants that as it relates to the YYY Virtual Center Application provided by XYZ pursuant to the Services designated in this Agreement:
- i. XYZ warrants to YYY that the occurrence of the date January 1, 2000 will not, by itself cause the YYY Virtual Center Application to materially fail to perform century date change 2000 date conversion and capability (including, but not limited to date, data century recognition, calculations which accommodate

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same century and multi-century formulas and date-values, correct sorting, ordering and date data interface values that reflect the century), failure to automatically compensate for and manage and manipulate data involving dates (including single century formulas and multi-century formulas) or to otherwise operate in accordance with the published specifications for such YYY Virtual Center Application; provided that all other software, hardware and products used in combination with the YYY Virtual Center Application properly exchange date data with the YYY Virtual Center Application.

- ii. Notwithstanding anything else contained in this Agreement, this warranty shall be deemed to be a warranty for current and future performance and shall apply for as long as maintenance fees are being paid by YYY. For the purpose of any applicable Statute of Limitation or Statute of Repose, discovery of any breach of this warranty shall be deemed to have been made when XYZ has actually experienced each such breach of this warranty; and
- iii. A disclaimer of any other express or implied warranties contained in this Agreement will not be deemed to be a disclaimer of this warranty.



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c. XYZ further warrants, covenants and represents that, in its performance hereunder, that it shall not knowingly introduce, through data transmission via modem or any other medium, any virus, worm, trap, trap door, back door, any contaminant, or disabling devices, including, but not limited to, timer, clock, counter, or other limiting routings, codes, commands, or instructions intended to damage or disable the software used by YYY, or other YYY information, or other YYY property other than in accordance with the specifications ("Harmful Code"). In the event that XYZ introduces Harmful Code, then, as YYY's sole and exclusive remedy, XYZ shall at no cost to YYY use reasonable efforts to provide and install a new copy of software without Harmful Code.

d. Notwithstanding anything else contained in this Agreement, this warranty shall be deemed to be a warranty for current and future performance and shall apply until for so long as maintenance fees are being paid by YYY. For the purpose of any applicable Statute of Limitation or Statute of Repose, discovery of any breach of this warranty shall be deemed to have been made when the YYY has actually experienced each such breach of this warranty.

10. CHARGES AND TERMS OF PAYMENT.

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- a. The applicable charges shall be specified in Exhibit 7. Unless otherwise agreed upon by the parties, in no event shall any charges exceed the charges as they are set forth in the attached Exhibit 7. In addition, YYY shall remit to XYZ approved out-of-pocket costs consistent with the procedures set forth in Exhibit 3 (Billing Procedures) attached hereto. No costs for any out-of-pocket services, (such services to include, but not necessarily be limited to, the creation of advertising copy, photography, layout, design, typesetting, or any other services related to, or necessary to support, XYZ's duties and responsibilities as described hereunder), rendered by XYZ shall be subject to any mark-up or increase. Notwithstanding the above, if there is a conflict between this Agreement and the YYY Billing Procedures, the terms of this Agreement shall supersede and govern.
- b. YYY will pay all taxes levied against or upon the services provided hereunder, or arising out of this Agreement, exclusive, however, of taxes based on XYZ's income, which shall be paid by XYZ. YYY agrees to pay directly any tax for which it is responsible or will reimburse XYZ upon receipt of proof of payment.
- c. XYZ will use all commercially reasonable efforts to maintain complete and accurate accounting records in connection with services performed and materials provided hereunder, in accordance with generally accepted accounting principles, to substantiate its charges.

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YYY shall have the right to appoint an independent certified public accountant, who is not compensated based on the results of the audit and who is acceptable to XYZ (which acceptance shall not be unreasonably withheld), to inspect the records of XYZ in order to verify the charges set forth in the accounting records. Such audit may only be performed once a year, upon reasonable prior notice and during regular business hours and at YYY's expense. Unless necessary to establish in a court of law YYY's right to payment of fees hereunder, YYY's auditor shall hold all information obtained in strict confidence, shall not disclose such information to any other person or entity without XYZ's prior written consent and shall not disclose to YYY any information regarding XYZ's business other than any noncompliance by XYZ with the fee payment provisions hereof. The terms of this provision shall survive the termination of this Agreement for a period of five (5) years.

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- d. Each payment pursuant to this Agreement will be made in U.S. dollars in and from the United States and will be made no later than thirty (30) days from the date of invoice sent to YYY on or after the occurrence of the event specified in Exhibit 7 for which payment is due.

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11. WARRANTIES.

- a. XYZ warrants that: (i) it has the authority and the right to enter into this Agreement, to perform services and provide the YYY Virtual Center Application hereunder, and that its obligations hereunder are not in conflict with any other XYZ obligations; (ii) all services will be performed in a competent and professional manner, and will substantially conform, in all material respects, to YYY's requirements expressly set forth in this Agreement; (iii) to its knowledge, neither the YYY Virtual Center Application, nor the performance of any services by XYZ infringe upon or violate the rights of any third party and to its knowledge, YYY shall receive free and clear title to all deliverables assigned to it pursuant to Section 6; and (iv) at the time of acceptance, the YYY Virtual Center Application will substantially conform to the Specifications and as YYY's sole and exclusive remedy for a breach of the foregoing, XYZ shall use all commercially reasonable efforts to correct and repair, at no cost to YYY, any defect, malfunction or non-conformity that prevents the YYY Virtual Center Application from conforming to the Specifications.
- b. Furthermore, XYZ warrants and represents that it shall not use the YYY Materials which it develops for YYY hereunder in the use and development of any software and software code for any other

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manufacturer or distributor of automobiles, motorcycles or recreational vehicles.

- c. Any warranty in this Agreement shall not apply to: (i) altered or damaged or any portion of the Application incorporated with or into other software; (ii) the Application if it was subjected to negligence, abuse or misapplication by YYY.
- d. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELECTICA MAKES NO WARRANTIES TO ANY PERSON OR ENTITY WITH RESPECT TO THE YYY VIRTUAL CENTER APPLICATION, SELECTICA MATERIALS OR ANY DELIVERABLE OR ANY SERVICES OR LICENSES AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

12. TERM AND TERMINATION.

- a. This Agreement shall commence as of the Effective Date and shall continue in full force and effect thereafter unless and until Exhibit 1 has been terminated or Milestone 5 has been completed, or as otherwise provided hereunder.
- b. In the event of any material breach of this Agreement by either party, the other party may terminate this Agreement, by giving thirty (30) days written notice to such other party; provided, however, that any

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such termination shall not be effective if such other party has cured the breach of which it has been notified prior to the expiration of said thirty (30) days.

- c. Subject to Section 12(d), upon any termination of this Agreement (i) all rights and licenses of the parties shall cease, (ii) each party shall turn over to the other all of the other party's, Materials and Confidential Information and (iii) Sections 1, 6, 9, 12(d), 13, 14, 15, 16, 17, 20, 21, 22 shall survive any termination of this Agreement, (iv)

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termination hereunder shall not affect any rights of XYZ to payments already accrued.

- d. Notwithstanding the above, if YYY terminates this Agreement pursuant to Section 12(b) and provided, and for so long as, YYY is and remains in compliance with the terms of this Agreement, the licenses granted in Section 8 shall survive termination.

13. LIMITATION OF LIABILITY.

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NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, AND EXCEPT FOR BODILY INJURY OR A BREACH OF SECTION 14, 16 OR 9, NEITHER PARTY SHALL BE LIABLE OR OBLIGATED WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF THE FEES PAID TO IT HEREUNDER (II) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (III) FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES; (IV) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; OR (V) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL.

14. INDEMNIFICATION.

a. XYZ, at its own expense, will defend and/or handle any claim or action against any YYY Affiliate for actual or alleged infringement of any U.S. patent, copyright, intellectual or industrial property right or any other similar right (including, but not limited to, misappropriation of trade secrets) based on the YYY Virtual Center Application and/or any deliverables furnished to YYY pursuant to this Agreement. XYZ agrees to give YYY prompt written notice of any such claim or action that could have an adverse impact on YYY's use or possession of same. As a condition to XYZ's obligations in this Section 14, XYZ shall have the right to conduct the defense of any such claim or action and all negotiations for its settlement; provided, however, that YYY may participate, at its expense, in such defense or negotiations to protect its interests. XYZ shall not

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be liable for any costs, expenses, damages or fees incurred by YYY in defending such action or claim, unless authorized by XYZ in advance and in writing. XYZ further agrees to indemnify and hold each of YYY and YYY Affiliates harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) associated with any such claim or action. As a condition to the foregoing, YYY must promptly notify XYZ in writing of any claim or action and cooperate with, and provides all available information, assistance and authority to, XYZ to defend or settle the action.

- b. If the Application is, or in the opinion of XYZ is likely to become, the subject of a claim, suit or proceeding of infringement, XYZ may in its sole discretion (a) procure, at no cost to YYY, the right to continue using the Application; (b) replace or modify the Application to render it non-infringing, provided there is no material loss of functionality; or (c) if, in XYZ's reasonable opinion, neither (a) nor (b) above are commercially feasible, terminate the license and refund the amounts paid by YYY for the Application (as depreciated on a straight-line basis over a period of 60 months). The foregoing obligations of XYZ do not apply with respect to software programs or portions or components thereof (i) not supplied by XYZ; (ii) which are modified by YYY other than as authorized by XYZ, if the alleged infringement relates to such modifications; (iii) combined with software or hardware

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products not conforming to XYZ's published system requirements, processes or materials where the alleged infringement relates to such combination, (iv) where YYY continues the allegedly infringing activity after being notified thereof or after being informed and provided with modifications that would have avoided the alleged infringement; or (v) where YYY's use of the Applications is not strictly in accordance with the purpose for which this license has been granted.

c. YYY represents that it has obtained the necessary consents, permits and approvals necessary to use the YYY Materials or any photographs, images or artwork which YYY secures and provides to XYZ, and shall assume royalty or other payments necessary to secure right, title and interest, or the necessary licensing rights in such photographs, images or artwork which YYY has obtained independent of XYZ. YYY agrees to indemnify and hold XYZ, its officers, employees and agents, harmless, including reasonable attorneys' fees, from and against any demand, claim, damage, judgment, action, cause of action, royalty payment made or brought against XYZ arising out

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of the purportedly unauthorized use of, or a claim of infringement related to, the YYY Materials or any photographs, images or artwork described above in this paragraph.

15. CONFIDENTIAL INFORMATION.

- a. Each party (the "Receiving Party") agrees to regard and preserve as confidential all technical, financial and business information related to the business and activities of the other party (the "Disclosing Party"), that may be obtained by such party from any source or may be developed as a result of this Agreement ("Confidential Information" of the Disclosing Party). The Receiving Party agrees to hold such Confidential Information in trust and confidence for the Disclosing Party and not to disclose such Confidential Information to any person, firm or enterprise, or use (directly or indirectly) any such information for its own benefit or the benefit of any other party, unless authorized by The Disclosing Party in writing, and even then, to limit access to and disclosure of such Confidential Information to The Receiving Party's employees on a "need to know" basis only. Confidential Information shall not be considered confidential to the extent, but only to the extent, that such information is: (i) already known by the Receiving Party free of any restriction at the time it is obtained; (ii) subsequently learned by the Receiving Party from an independent third party, free of any restriction; (iii) available publicly.

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b. Each party acknowledges and agrees that, in the event of a breach or threatened breach of any of the foregoing provisions, the other party will have no adequate remedy in damages and, accordingly, shall be entitled to injunctive relief against such breach or threatened breach; provided, however, that no specification of a particular legal or equitable remedy shall be construed as a waiver, prohibition or limitation of any legal or equitable remedies in the event of a breach hereof.

16. ADVERTISING.

Neither party will use the other party's name or marks, refer to or identify the other party in any advertising or publicity releases or promotional or marketing correspondence to others without such other party's written approval (such approval shall not be unreasonably withheld).

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17. GOVERNING LAW AND INTERPRETATION.

This Agreement shall be construed and enforced under the substantive laws of the State of California. Headlines are for reference only and shall not

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affect the meaning of any terms. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will continue unimpaired.

18. **INSURANCE.**

Unless otherwise agreed upon, XYZ agrees to obtain and maintain adequate worker's compensation, disability, unemployment insurance and the like for those of its employees performing services under this Agreement. XYZ agrees to obtain and maintain comprehensive general and vehicular liability insurance for claims for damages because of bodily injury (including death) and property damage caused by or arising out of acts or omissions of its employees. The minimum limits of such insurance shall be one million dollars (\$1,000,000) for each person, one million dollars (\$1,000,000) for each accident involving bodily injury and one million dollars (\$1,000,000) involving property damage for each accident. Each such insurance policy shall name YYY as co-insured and additional loss payee and shall provide for at least thirty (30) days prior notice to YYY in the event of any modification or cancellation. XYZ will also notify YYY at least thirty (30) days in advance if XYZ desires to modify or cancel any such insurance. Upon request, XYZ shall furnish YYY with certificates of insurance to evidence its compliance with the provisions hereof.

XYZ shall also obtain and maintain a policy or policies of errors and

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omissions, product liability and property damage which shall include YYY as a named insured. XYZ shall supply YYY with a certificate of such insurance within twenty (20) days after notice of the execution of this Agreement, which shall state that the carrier undertakes to give YYY twenty (20) days advance notice of cancellation. The policy limits shall be in the amount of not less than five million dollars (\$5,000,000) for each occurrence.

19. ASSIGNMENT.

Except to an entity that succeeds to all or substantially all the business or assets of a Party, neither party may assign, transfer or subcontract the performance of its services, or any of its rights and/or obligations, without the other party's prior written consent, and any attempt to do so shall be void, except YYY may assign this Agreement, and/or any of its rights or obligations to any YYY Affiliate, without XYZ's consent and upon written notice to XYZ.

20. SUBCONTRACTING.

XYZ shall be solely responsible for all its obligations and responsibilities hereunder notwithstanding any subcontracting.



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21. NOTICES.

All notices shall be in writing and delivered personally or properly mailed, first class mail, to the addresses of the parties set forth at the beginning of this Agreement, to the attention of the undersigned, with a copy to the signatories of this Agreement, at the same address, or to such other address or addressee as either party may designate by written notice. Any such notice shall be deemed given on the date delivered or when placed in the mails as specified.

22. ENTIRETY.

This Agreement, together with the Exhibits, contains the entire agreement between the parties and supersedes any prior or inconsistent agreements, negotiations, representations and promises, written or oral. No modification to this Agreement nor any failure or delay in enforcing any term, exercising any option or requiring performance shall be binding or construed as a waiver unless agreed to in writing by the parties hereto.

23. EMPLOYEE NON-COMPETITION.

During the term of this Agreement, XYZ employees that are assigned to develop the YYY Application shall not agree to perform services or provide

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material or information, directly or indirectly, to for or in support of any Competitor of YYY in connection with a Competitive Project that is substantially similar in form, substance, purpose or intent as performed or provided under this Agreement. For purposes of this Section, "Competitor" is defined as any manufacturer or distributor of automobiles, motorcycles, or recreational vehicles and "Competitive Project" is defined as any task or work effort whose intent or result is or will be substantially similar to any contemplated by this Agreement.

24. ESCROW.

- a. XYZ agrees within a reasonable time after execution of this Agreement both parties shall enter into an agreement upon the terms set forth in Exhibit 10 (Escrow Agreement) with Fort WWW ("Escrow Agent") unless otherwise agreed upon by the parties wherein XYZ shall provide the source code for the YYY Virtual Center Application ("Source Code") to said Escrow Agent. YYY shall bear all costs associated with escrow.
- b. Escrow Agent shall hold such Source Code throughout the term of this Agreement, and any renewal or extension of said Agreement, and shall release said Source Code to YYY in the event of, and only in the event a release condition specified below ("Release Condition") and in accordance with the terms of the Escrow Agreement. The circumstances that shall give rise to a Release Condition are set forth below, and

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only those circumstances as mentioned hereinafter

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shall give rise circumstances which trigger the filing for release as set forth in the Escrow Agreement.

i. XYZ becomes subject to any administrative or governmental action or measure which terminates its business (without a successor).

ii. XYZ substantially and continuously fails to meet the support obligations set forth in this Agreement solely due to the fault of XYZ and such failure gives rise to a right on the part of YYY to terminate said Agreement.

iii. XYZ makes, or initiates the process making, a general assignment for the benefit of creditors, or any involuntary petition to obtain an order for relief against XYZ is filed under the US Bankruptcy Code provided it is not vacated within 120 days from the date of filing, or a receiver or custodian of bankruptcy is appointed for XYZ provided such appointment is not vacated within 120 days

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from the date of such appointment.

c. In the event of one or more of the occurrences set forth above in Section 24(b) (i), (ii) or (iii) YYY may activate the release process as specified in the Escrow Agreement.

d. Upon release of the Source Code pursuant to the Escrow Agreement, YYY shall have a non-exclusive, perpetual, non-transferable license to the Source Code only for the purposes of operating, maintaining and supporting users of the Application and only for so long as a Release Condition exists.

YYY OF NORTH AMERICA, INC.

SELECTICA, INC.

By: /s/

By: /s/

Name:

Name:

Title: VICE PRESIDENT, MARKETING

Title: VICE PRESIDENT, MARKETING

Date:

Date:

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YYY OF, INC.

By: /s/

Name:

Title: PRESIDENT

Date:

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EXHIBITS

Omissis

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