

WEB SITE DEVELOPMENT AGREEMENT

This Web Site Development Agreement (the "Agreement") is made this ___ day of _____, 20xx (the "Effective Date") by and between ABC, Inc., a ___[state]_____ corporation with offices at _____[address]_____ (the "Customer") and Web Sites, Inc., a ___[state]_____ corporation with offices at _____[address]_____ (the "Developer").

WHEREAS, Developer is in the business of providing certain software and computer consulting services pertaining to the development of Internet world wide web (WWW) sites.

WHEREAS, Customer desires to have Developer provide consulting and world wide web site development and related services to be defined in a Statement of Work.

NOW THEREFORE, in consideration of the premises and undertakings set forth herein, the parties agree as follows:

1. Description of Services

Developer agrees to provide consulting, world wide web development, and related services ("Services") specified in the Statement of Work attached hereto as Exhibit A, as amended from time to time by Supplemental Statements of Work. The Services shall be provided in accordance with the provisions of this Agreement and the applicable Statement of Work.

2. Payment for Services

2.1 Customer agrees to pay Developer for the Services in accordance with the Fee Schedule attached hereto as Schedule A or set forth in any Statement of Work. The fees specified in Schedule A or in any Statement of Work are the total fees and charges for the Services and will not be increased during the term of this Agreement except as the parties may agree in writing.

2.2 Invoices. Developer shall invoice Customer for Services rendered during the preceding monthly period. The invoice will detail the work performed during such period. Customer shall pay the invoice within thirty (30) days after receipt.

3. Statements of Work

When required by either party, the parties may in good faith negotiate Supplemental Statements of Work ("Supplements"), each of which upon

signing by both parties shall be deemed part of this Agreement. Such Supplements shall be substantially in the form of Appendix A hereto. Unless otherwise agreed in a Supplement, the following provisions shall govern Supplements generally:

3.1 Definitions. As used in this Agreement and any relevant Statement of Work, the following terms shall be defined as follows:

3.1(a) "Milestone Schedule" shall mean the schedule for the Services as set forth as part of the relevant Statement of Work.

3.1(b) "Specifications" shall mean the requirements for the development of the Web Site or other Deliverables as set forth as part of the relevant Statement of Work.

3.1(c) "Deliverables" shall mean any work designed, created, and/or produced by Developer hereunder in connection with this Agreement and as further set forth as part of the relevant Statement of Work.

3.2 Information to be Supplied to Developer. To implement a Statement of Work, Customer shall supply to Developer the Specifications, Milestone Schedule, pricing, and payment terms (including an estimate of required hours or a fixed price proposal) and any other information that Developer may reasonably require to evaluate the performance of the services proposed by Customer (the "Proposal").

3.2(a) Within five (5) business days of Developer's receipt of the Proposal, Developer shall respond and either accept the Proposal as a Statement of Work or require changes thereto.

3.2(b) The parties shall negotiate in good faith with respect to the Proposal, until both parties agree to implement the Proposal, as revised if necessary, as a Statement of Work. Developer shall not be required to commence work pursuant to the Statement of Work until both parties have agreed in writing to the Statement of Work.

3.2(c) All Services performed hereunder, other than fixed price proposals, shall be compensated pursuant to the Fee Schedule set forth in Schedule A or any applicable Statement of Work.

3.2(d) The performance of Services required in the Statement of Work shall be completed in accordance with the Milestone Schedule set forth in the Statement of Work, provided Customer shall have delivered all necessary information and materials in a timely fashion, and if not, then

Consultant's obligations which are dependent on such information or materials shall be extended to reflect such delay.

3.3 Term. In the absence of an express provision for the duration or early termination of a Supplement, any SOW shall be terminable upon thirty (30) days written notice of either party without cause.

3.4 Payment. Supplements may call for lump sum or periodic payment, payment against performance milestones, compensation based upon time and materials, or on a fixed price, or any other arrangement agreed upon by the parties.

4. Delivery of Satisfactory Production Materials by Customer to Developer

4.1 Customer shall provide Developer, upon reasonable notice, all necessary materials, data, or documentation pertaining to the Services as set forth in the applicable SOW.

4.2 Customer shall deliver to Developer such materials, data, or documentation in a form satisfactory to Developer. All photographs, images, video, animation, film, illustrations, drawings, charts, maps, indexes and other graphical and visual materials, as well as all music, sound, narration and other audio materials or other works owned or controlled by Customer that are necessary to completion of the Services (collectively "Customer Content") shall be suitable for reproduction and shall be timely delivered to Developer in the form specified in the applicable SOW.

4.3 Developer shall make no changes to the text or appearance or otherwise of any of the Customer Content without the prior written approval of Customer. Customer shall make the final determination of all Customer Content to be used on the Web Site.

4.4 Developer reserves the right to refuse to include Customer Content in the web site that Developer deems offensive or otherwise inappropriate.

5. Delivery and Acceptance of Deliverables

5.1 Time and Manner of Delivery. Developer shall deliver each Deliverable at the times and in the manner specified under this Agreement, including any relevant Statement of Work. Notwithstanding the foregoing, if Customer fails to provide Developer with the information or feedback required under the acceptance test procedure set forth herein

within the applicable time period, then Developer's obligations that are dependent on such information or approval shall be extended to reflect such delay.

5.2 Procedure for Acceptance. The procedure for acceptance of any Deliverable shall be as follows:

5.2(a) Customer shall have thirty (30) days to inspect and test each such Deliverable when received to determine if it conforms to the Specifications.

5.2(b) If any Deliverable fails to conform to its Specifications, Customer shall give Developer written notice of the failure stating the defect in the Deliverable. Developer shall then have thirty (30) days to remedy such failure or defect and redeliver such Deliverable to Customer.

5.2(c) After resubmission of the Deliverable by Developer, Customer shall again inspect the Deliverable to confirm that it conforms to Specifications. If the resubmitted Deliverable again fails Customer's acceptance testing, Customer may, in its sole discretion (i) deem the failure to be a material breach of this Agreement; or (ii) accept the Deliverable as a non-conforming Deliverable. If Customer elects (ii), Customer may in its sole discretion either: (aa) withhold a mutually agreed upon offset from the fees payable to Developer for the Deliverable under this Agreement or any applicable Statement of Work; or (bb) invoice and recover from Developer the amount of Customer's reasonable out-of-pocket costs to correct, modify, and/or complete the Deliverable in accordance with the Specifications.

5.3 Each Deliverable shall be deemed to be accepted upon written notice by Customer to Developer of such acceptance. Customer shall not unreasonably withhold or delay acceptance.

5.4 Except in the instances of Force Majeure or in the case of an extension pursuant to Sections [], a failure by Developer to provide Deliverables to Customer within the agreed upon time period shall be a material breach of the Agreement.

Section 6 Rights in Data and Works

6.1 For purposes of this Agreement, the following terms shall have the meanings set forth below:

6.1(a) “Custom Work Product” shall mean all designs, discoveries, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, information, and materials made, conceived, or developed by Developer either before or after the Effective Date of this Agreement on behalf of Customer in furtherance of the Site or other Services provided to Customer under the terms of this Agreement, and paid for by Customer. Customer Work Product does not include any preexisting software owned by Developer, nor any Customer Content, as herein defined, nor any third party software products incorporated into the Custom Work Product.

6.1(b) “Customer Content” shall mean any computer programs, designs, data, video or audio materials, graphics or other materials provided by Customer to Developer pursuant to this Agreement.

6.1(c) “Intellectual Property” shall mean intellectual property or proprietary rights, including but not limited to copyright rights, moral rights, patent rights (including patent applications and disclosures), rights of priority, mask work rights, and trade secret rights, recognized in any country or jurisdiction in the world.

PRO-DEVELOPER PROVISIONS:

6.2 Ownership. Customer agrees that Developer is the owner of all rights, title and interest in and to the Custom Work Product, including, but not limited to page design and layout and associated techniques, CGI or PERL scripting, any software (including all routines and algorithms therein), images or icons developed by Developer or its agents pursuant to this Agreement.

6.3 Customer’s Rights. Developer grants to Customer a non-exclusive, worldwide, fully-paid license to use the Custom Work Product and the executable form of all software contained therein, and to reproduce, transmit, and distribute it by electronic means solely for Customer’s own business use in operating the web site. This license shall be perpetual and irrevocable except as provided in Section [] below. Customer may not (i) create derivative works based on the Custom Work Product, (ii) modify the Custom Work Product except to update certain modules identified by Developer; (iii) use the Custom Work Product to provide services to third parties, or (iv) rent, lease, market, or sublicense the Custom Work Product to third parties, except pursuant to a separate distribution agreement with Developer.

6.4 Developer’s Rights to Customer Content. Customer grants to Developer a non-exclusive, worldwide, perpetual, royalty-free license to reproduce, modify, display, perform, adapt, transmit, distribute, improve, and otherwise use the Customer Content in connection with Developer’s performance under this Agreement.

PRO-CUSTOMER PROVISIONS:

6.2 Ownership. Unless otherwise specified in a Statement of Work, the Custom Work Product, all Deliverables, and all Intellectual Property Rights therein shall be deemed to be the sole and exclusive property of Customer and all title and interest therein shall vest in Customer and shall be deemed to be a “work made for hire” and made in the course of the Services rendered hereunder. To the extent that any title to any such Custom Work Product may not, by operation of law, vest in Customer or such works may not be considered works made for hire, all right, title and interest therein shall be irrevocably assigned to Customer. All such Custom Work Product shall belong exclusively to Customer with Customer having the right to obtain and to hold in its name copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Developer agrees to provide reasonable assistance and cooperation to Customer to acquire, transfer, maintain, perfect, and/or enforce the Intellectual Property rights in the Custom Work Product, including but not limited to execution of assignment of ownership or other documents as may be reasonably required by Customer.

6.3 Developer agrees to: (i) disclose promptly in writing to Customer all Custom Work Product; (ii) cooperate with and assist Customer to apply for, and to execute any applications and/or assignments reasonably necessary to obtain any patent, copyright, trademark, or other statutory protection for the Custom Work Product in Customer’s name as Customer deems appropriate; and (iii) otherwise treat all Custom Work Product as Confidential Information, as herein defined. These obligations will survive any expiration or termination of this Agreement.

{To mitigate the effects of that approach on a developer’s standard technology library, a developer would request provisions like those that follow.}

PROPOSED MITIGATING ALTERNATIVES FROM DEVELOPER’S PERSPECTIVE:

6.4(a) “Custom Work Product” shall mean computer programs, designs, products, developments, drawings, notes, documents and other materials

created by Developer during the term of this Agreement on behalf of Customer in furtherance of the Web Site development and other Services that has been delivered to Customer and paid for by Customer, except for Generic Modules. Custom Work Product shall not include any Customer Content, nor any third party software products incorporated into the Custom Work Products, nor any Developer Technology, as herein defined.

6.4(b)“Generic Modules” shall mean discrete computer program subroutines that are not specific to the functions of the Custom Work Product but are useful generally in Developer’s business and that are designated as “Generic Modules” in a writing signed by both parties.

6.4(c)“Developer Technology” shall mean any and all existing software, technology, know-how, algorithms, procedures, techniques, and solutions associated with the use, design, development, testing, and distribution of the Custom Work Product and improvements to such existing software and related technology, which technology is owned by Developer or its suppliers and used by Developer in the development effort hereunder.

6.5 Developer hereby grants to Customer a perpetual, irrevocable, non-exclusive, worldwide, fully paid license to use, reproduce, modify, display, perform, create derivative works based upon, and to grant end-user customers (either directly or indirectly via distributors, value-added resellers and software developers) sublicenses to use Developer Technology, the Generic Modules, and all Intellectual Property rights contained in the Custom Work Product.

6.6 Developer’s Rights. Developer Technology, the Generic Modules, and all Intellectual Property rights contained therein are and will remain the sole and exclusive property of Developer.

6.7 Customer grants to Developer a perpetual, irrevocable, non-exclusive, worldwide, fully paid license to use, reproduce, modify, display, perform, create derivative works based upon, and to grant end-user customers (either directly or indirectly via distributors, value-added resellers and software developers) sublicenses to use the Custom Work Product and all Intellectual Property rights contained therein; provided that Developer may not use the Custom Work Product to create (directly or indirectly) a product for any of the companies listed in Exhibit [] [or a direct competitor of Customer] that performs substantially the same functions as the software contained in the Custom Work Product.

6.8 Nothing in this Agreement shall be construed to limit Developer’s right to use information in nontangible form retained by Developer as

ideas, information and understandings retained in the human memories of its employees, contractors and agents, provided that Developer may only use information of general applicability and not Customer's Confidential Information. This provision shall not be construed to operate to grant Developer any rights under Customer's patents or copyrights.

6.9 Customer will provide reasonable assistance and cooperation to Developer to acquire, transfer, maintain, perfect, and/or enforce the Intellectual Property rights in the Web Site (excluding Customer Content) and Custom Work Product, including, but not limited to, execution of a formal assignment or such other documents as may be reasonably requested by Developer. Customer hereby appoints the officers of Developer as Customer's attorneys-in-fact to execute such documents on Customer's behalf for this purpose.

7. Development Credit

Customer shall acknowledge Developer as the Web Site developer in text in an "acknowledgment page" of the Web Site, which will include a hyperlink to Developer's site on the World Wide Web. The format of such development credit shall be at the sole discretion of Customer. It shall be the sole responsibility of Developer to provide Customer with sufficient information to create and update such hyperlink. Such development credit will remain on the Web Site for until two (2) years from the Initial Display Date as defined herein or the termination of this Agreement, whether or not the Site is transferred in-house to facilities at the premises of Customer. Such development credit shall not give Developer any trademark, copyright, or other proprietary interest or rights in the Display other than as expressly set forth otherwise in this Agreement. Nothing herein shall be construed to require the Customer to promote the Site and the level of effort and spending in promotion of the Site, if any, shall be in the Customer's sole discretion.

SAMPLE PRO-DEVELOPER WARRANTY PROVISION:

7. Warranties and Disclaimers

7.1 Customer represents and warrants that it is authorized by all required authorities [to grant the license to the Customer Content to Developer as set forth in Section [] and] that neither the Customer Content nor Developer's exercise of the license granted in Section [] hereof infringes upon any copyright, patent, trademark, or other proprietary rights of third parties or any other applicable laws, regulations and non-proprietary third-party rights. Moreover, Customer warrants that the Customer Content contains no material that is unlawful, harmful, fraudulent, threatening, abusive, harassing, defamatory, vulgar, obscene, profane, hateful, racially, ethnically, or otherwise objectionable, including, without limitation, any material that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable laws or regulations.

7.2 Neither Developer nor any of its information providers, employers or agents warrant that the Services or Deliverables provided hereunder will be uninterrupted or error free. Nor does Developer or any of its information providers, employees, or agents make any warranty as to the results to be obtained from the use of the Web Site or any other Services provided hereunder. The Services and Deliverables are to be performed and delivered on an "AS IS" basis, without warranties of any kind, either express or implied, including but not limited to warranties of title or implied warranties of merchantability or fitness for a particular purpose.

SAMPLE PRO-CUSTOMER WARRANTY PROVISIONS:

7.1 Developer represents and warrants that it is the owner of or otherwise has the right to use and distribute all materials and methodologies used in connection with providing the Deliverables, that such materials and methodologies (other than information or materials supplied by Customer and reproduced accurately in the Deliverables) shall not infringe any copyright or other proprietary right of a third party, and that Developer will comply with all applicable laws and regulations in performance of its obligations hereunder.

7.2 Developer represents and warrants that (a) all of the Services to be performed by it under this Agreement will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained, and qualified personnel; (b) the Deliverables will be configured using the most up-to-date commercially reasonable

technical specifications; (c) the Deliverables will operate in conformance with the terms of this Agreement, including without limitation, any applicable Statement of Work; (d) the Deliverables are and will be free of any software disabling devices or internal controls, including, without limitation, time bombs, viruses, or devices of similar nature; and that (e) all Deliverables hereunder will be compatible and operate in conjunction with all software and hardware previously delivered under this Agreement.

8. Limitations on Liability

8.1 Limitation on Liability. Except for the indemnification obligations set forth in this Agreement, neither party shall be liable to the other for lost profits, lost opportunities, or special, consequential, or indirect damages under any circumstances.

8.2 Limitation on Developer's Liability. Developer's liability to Customer shall in no event exceed the total amounts paid by Customer to Developer under this Agreement.

8.3 Limitation on Customer's Liability. Customer's liability to Developer for any and all matters related to this Agreement shall not exceed the total of payments due to Developer from Customer hereunder.

SAMPLE PROVISIONS

9. Indemnification

9.1 Developer Indemnification. Developer shall indemnify and hold harmless (including payment of reasonable attorneys' fees) Customer, its directors, officers, employees, and agents (each of the foregoing being hereinafter referred to individually as "Indemnified Party") against all liability to third parties arising from or in connection with any acts or omissions of Developer in connection with its performance of this Agreement. This indemnification includes any cause of action brought against the Indemnified Party in relation to the services including, but not limited to, those related to alleged copyright infringement, defamation, products liability, the **[insert name of appropriate state deceptive trade practices statute]**, fraud, or based in whole or in part on any negligent or grossly negligent act or omission of the Indemnified Party, its officers, agents, or employees. Developer's obligation to indemnify the Indemnified Party will survive the expiration or termination of this agreement by either party for any reason. Developer shall pay for the defense of any such third party action arising as described herein unless

the Indemnified Party and Developer shall mutually agree that the Indemnified Party will pay for the defense.

9.2 Customer Indemnification. Customer shall indemnify and hold harmless (including payment of reasonable attorneys' fees) Developer, its directors, officers, employees, and agents (each of the foregoing being hereinafter referred to individually as "Indemnified Party") against all liability to third parties arising from or in connection with the Customer Materials provided by Customer to Developer as necessary to perform services under this Agreement, or any acts or omissions of Customer in relation to its dealings with third parties in connection with the performed services under this Agreement. This indemnification includes any cause of action brought against the Indemnified Party in relation to the services including, but not limited to, those related to alleged copyright infringement, defamation, products liability, the **[insert name of appropriate state deceptive trade practices statute]**, fraud, or based in whole or in part on any negligent or grossly negligent act or omission of the Indemnified Party, its officers, agents, or employees. Customer's obligation to indemnify the Indemnified Party will survive the expiration or termination of this agreement by either party for any reason. Customer shall pay for the defense of any such third party action arising as described herein unless the Indemnified Party and Customer shall mutually agree that the Indemnified Party will pay for the defense.

10. Development Credit

Customer shall acknowledge Developer as the Web Site developer in text in an "acknowledgment page" of the Web Site, which will include a hyperlink to Developer's site on the World Wide Web. The format of such development credit shall be at the sole discretion of Customer. It shall be the sole responsibility of Developer to provide Customer with sufficient information to create and update such hyperlink. Such development credit will remain on the Web Site for until two (2) years from the Initial Display Date as defined herein or the termination of this Agreement, whether or not the Site is transferred in-house to facilities at the premises of Customer. Such development credit shall not give Developer any trademark, copyright, or other proprietary interest or rights in the Display other than as expressly set forth otherwise in this Agreement. Nothing herein shall be construed to require the Customer to promote the Site and the level of effort and spending in promotion of the Site, if any, shall be in the Customer's sole discretion.

11. Termination

11.1 This Agreement shall commence on the Effective Date. After the initial term specified in the Statement of Work, either party may notify the other party, in writing, of its election not to renew, in which event this Agreement will terminate upon receipt of such notice. This Agreement may be renewed with revised terms, conditions, and prices only upon written agreement by both parties.

11.2 Termination. Either party, upon giving written notice to the other party, may terminate this Agreement at any time:

11.2(a) if the other party or any of its employees, consultants, or other agents violate any provision of this Agreement and the violation is not remedied within a reasonable period after the party's receipt of written notice of the violation;

11.2(b) at any time in the event the other party terminates or suspends its business, becomes subject to any bankruptcy or insolvency proceeding under federal or state statute, or becomes subject to direct control by a trustee or similar authority;

11.2(c) if continued performance of the Services materially affects the ability of either party to conduct its business for any reason.

In the event that any of the above events occurs with respect to a party, that party shall immediately notify the other party of its occurrence.

11.3 Obligations upon Expiration or Termination. Upon expiration or termination of this Agreement, Developer shall promptly return to Customer material that pursuant to Section [] is owned by Customer. Expiration or termination of this Agreement shall not relieve either party of its obligations regarding Confidential Information. Upon expiration or termination, Developer will invoice Customer for all services performed as of the date of expiration or termination. Upon full payment of all past due amounts by Customer, Developer shall turn over to Customer all work performed by Developer pursuant to the Agreement as of the date of such expiration or termination.

11.4 Developer agrees to negotiate in good faith and enter into a Source Code Escrow Agreement ("SCEA") with Customer and a

third party escrow agent (the “Escrow Agent”). Developer will provide the Escrow Agent with a copy of the source code of the transaction server software (the Unix Version and the NT version as it is developed) and documentation therefor (the “Deposit”) to be held in escrow pursuant to the terms of the SCEA. The SCEA will provide that the Deposit will be released to Customer: (a) upon Developer making an assignment for the benefit of its creditors; (b) upon the filing by Developer under any voluntary bankruptcy or insolvency law, the reorganization of Developer’s assets or the appointment of a trustee or receiver for Developer’s property; (c) upon the material breach of this Agreement by Developer relating to the Services to be performed hereunder, unless within thirty (30) days of written notice from Customer, Developer has remedied the breach. Customer will be responsible for the Escrow Agent fees. The Deposit shall be updated by Developer no less than quarterly with the current version of the source code and documentation of the Unix version and the NT version, and shall be updated whenever Developer changes the source code on behalf of the Customer.

12. Confidentiality

12.1 Confidential Information. “Confidential Information” shall mean a party’s information that is not generally known by non-party personnel, used by the party and which is proprietary to the party or the disclosure of which would be detrimental to the party. Confidential information includes, but is not limited to, the following types of information (whether or not reduced to writing or designated as confidential): computer scripts, software or routines; internal personnel, financial, marketing, and other business information, and manner and method of conducting business; strategic, operations, and other business plans and forecasts; information relating to the party’s employees, customers, vendors, or other contractors; and the existence of a contractual relationship between the parties. Confidential Information shall not include any information which is or becomes generally available to the public without breach of this Agreement, which is in the possession of a party prior to its disclosure by the other party, or becomes available from a third party not in breach of any obligation of confidentiality to the disclosing party.

12.2 Non-disclosure. Each party agrees not to use, disclose, sell, license, publish, reproduce, or otherwise make available the Confidential Information of the other party except and only to the extent necessary to perform under this Agreement. Each party agrees that the Confidential Information of the other party shall be held in strict confidence and shall not be used or disclosed without the express

written consent of the other party, except as may otherwise be required by law. Each party shall use reasonable measures to secure and protect the other party's Confidential Information, including measures at least as strict as those such party uses to protect its own Confidential Information, and to take appropriate action by instruction or agreement with its employees, consultants, or other agents who are permitted access to the other party's Confidential Information to satisfy its obligations under this Agreement.

13. Miscellaneous Provisions

13.1 Maintenance and Support. During the term of this Agreement, Developer agrees that at no extra cost to Customer: (a) to the extent any Deliverable or Service provided by Developer shall fail to fulfill any warranty therefor, Developer shall, upon written notice by Customer, use its best efforts to promptly remedy such failure; and (b) Developer shall promptly deliver to Customer all software containing bug fixes or error corrections to any software or other Deliverable provided hereunder to Customer, including without limitation the Display, at no additional cost to Customer. In connection with such maintenance, Customer shall provide Developer with such information as Developer reasonably requires in a reasonable time to allow Developer to provide such maintenance. Developer shall have no responsibility for the maintenance of any third party software or hardware, other than as provided for herein or pursuant to any agreement entered into by Developer pursuant to the terms of this Agreement.

13.2 Subcontracting. Any subcontract made by Developer shall incorporate by reference all the terms of this Agreement.

13.3 Nonsolicitation. Developer and Customer agree not to hire or solicit for employment employees who are employed by the other or who were employed by the other party during the term of this Agreement for a period of one year following termination of this Agreement without the prior consent of that party.

13.4 Publicity. Developer agrees that it will not, without the written consent of Customer in each instance (i) use in advertising, publicity or otherwise (including without limitation on the Internet) the name of Customer, Customer's domain name, any trademark, trade name, symbol, or any abbreviation or contraction thereof owned by or referring to Customer, or (ii) represent, directly or indirectly, that any product or service offered by Developer has been approved or endorsed by Customer

13.5 Dispute Resolution. The parties agree that any dispute(s) arising under this Agreement will be submitted promptly for binding resolution by an arbitrator/mediator with specific expertise in Internet and electronic communications matters and to be heard in _____ or such other mutually agreeable location.

13.6 Non-Assignment. Neither party shall assign or subcontract any of its rights or obligations under this Agreement to any other entity without the other party's prior written consent.

PRO-DEVELOPER ALTERNATIVE

13.6 Assignment. Developer may, at its sole discretion, assign or subcontract the whole or any part of this Agreement without Customer's prior consent. Customer may not sell, transfer or assign this Agreement, except to entities controlled by Customer, without the prior consent of Developer.

PRO-CUSTOMER ALTERNATIVE

13.6 Assignment. Developer may, at its sole discretion, assign or subcontract the whole or any part of this Agreement without Customer's prior consent. Customer may not sell, transfer or assign this Agreement, except to entities controlled by Customer, without the prior consent of Developer, such consent not to be unreasonably withheld or delayed.