

WEB SERVICES AGREEMENT

This Web Services Agreement ("Agreement") is made and entered into as of this ____ day of _____, 20__, by and between Pen Publishing Interactive, Inc., a Kansas corporation ("Developer"), with its principal place of business at _____, and _____ ("Customer") a _____ corporation, with its principal place of business at _____.

Developer is in the business of providing software and computer consulting services in connection with creating and operating web sites for the internet. In accordance with the terms and conditions of this Agreement, Customer has requested that Developer provide, and Developer has agreed to provide, certain services for the purpose of creating a custom web site for Customer, and providing public access to the web site via certain computer server and other equipment on a non-exclusive basis.

NOW THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. SERVICES.

1.1. Web Site Development. Developer agrees to provide Customer certain software and computer consulting services (collectively, the "Development Services") for the purposes of initially creating those computer files, audiovisuals, and other content (collectively, the "Web Site") for use on the World Wide Web service of the Internet more particularly described on and in accordance with Exhibit A.

1.2. Modification Services. Customer may also request and Developer may provide, subject to Developer's agreement and the availability of Developer personnel and equipment, additional services (the "Modification Services"). All Modification Services shall be provided on a time and materials basis in accordance with Developer's then current charges. As of the effective date of this Agreement, Developer's current time and materials charges are set forth on Exhibit A. Modification Services may include, without limitation, maintenance or modification of the Web Site and changes to the scope of Development Services.

1.3. Hosting Services. Developer agrees to place the Web Site on a computer server owned, operated, or accessible by Developer and allow storage of information received by Customer or from the general public on such server on a monthly basis, subject to the limits and as more particularly described on Exhibit A (collectively, the "Hosting Services"; Development Services, Modification Services, and Hosting Services, are collectively referred to as the "Services").

1.4. Services Generally. All Services under this Agreement shall be performed in accordance with Developer's standard procedures, so long as such procedures do not conflict with the express terms of this Agreement.

2. FEES AND EXPENSES.

2.1. Development Fee. Customer shall pay for the Development Services in the amounts and in accordance with the schedule of payment as provided on Exhibit A ("Development Fee").

2.2. Hosting Services Fees. Customer shall pay for the Hosting Services in accordance with the fee schedule set forth on Exhibit A (the "Hosting Fee").

2.3. Other Fees. Fees for Development Services shall be payable in accordance with Exhibit A. Fees for Hosting Services, and Modification Services shall be invoiced on a regular basis. Customer shall

pay such invoices within 15 days after the date of invoice. The fees referred to in Sections 2.1, 2.2, and 2.3 are collectively referred to as "Fees."

2.4. Expenses. Customer shall reimburse Developer for all expenses reasonably incurred in rendering Services to Customer ("Expenses"). Such Expenses shall include, without limitation, reasonable travel expenses (including transportation, lodging, and meals) and the cost of any courier services, photocopying, facsimile, long distance telephone calls, and other expenses. Expenses shall normally be invoiced on a monthly basis. Customer shall pay such invoices within 30 days after the date of invoice. Travel expenses and other expenses, other than photocopying, facsimile, and long distance telephone calls, shall be approved in advance by Customer before they are incurred.

2.5. Late Payments. Interest may be charged by Developer on overdue accounts and any other fees and expenses not paid to Developer as provided hereunder at the rate of ONE AND ONE-HALF PERCENT (1-1/2%) per month or the maximum amount allowed by law, whichever is less, commencing with the date payment was due.

2.6. Taxes. Fees and Expenses are exclusive of taxes. Customer shall be responsible for all taxes, levies and assessments except for taxes based on the net income of Developer and shall promptly pay or, if Developer has paid any such amounts, reimburse Developer for all such taxes, levies or assessments. The parties acknowledge that most of the Services are currently characterized as services for which sales taxes do not apply. Developer shall notify Customer upon Developer having actual knowledge of any legislation to impose sales or similar taxes on the Services.

3. CUSTOMER RESPONSIBILITIES.

3.1. Designation of Project Manager. Customer shall designate an employee who shall be assigned the primary responsibility for communicating with and providing necessary assistance to Developer during the term of this Agreement. Communications with Developer regarding development of the Web Site shall be made or coordinated by such designated employee.

3.2. Customer Responsibilities. In addition to the obligations of Customer as otherwise specified in this Agreement, Customer shall be solely responsible for the following:

(a) Selection of products and services, including the Services, to achieve Customer's intended results;

(b) Providing accurate text, photographs, pictures, animation as necessary to Developer to perform the Services and develop the Web Site;

(c) Any information, programs and other information that Customer receives as a result of the use of the Services, including, without limitation, the entire responsibility for any inaccuracies of such information, losses of data or programs, breaches of security, viruses, and disabling or harmful devices that Customer may download or otherwise experience as a result of Customer's use of the Services;

(d) Customer agrees to use the Services in a manner consistent with any and all applicable laws and regulations; and

(e) Customer shall defend, release, indemnify and hold harmless Developer from and against any and all claims, suits, losses, liabilities, obligations, demands, damages and expenses, including, without limitation, attorneys fees and costs, which directly or indirectly arise in connection with the responsibilities of Customer in this Section 3.2.

4. ADDITIONAL DEVELOPER RESPONSIBILITIES. Developer has implemented a reasonable plan of identifying and avoiding losses of data or programs, breaches of security, viruses, and disabling or harmful devices on the computers owned or operated by Developer, although the parties acknowledge that such problems are often difficult to detect or prevent. So long as Developer uses good faith efforts to maintain a reasonable plan of identifying and avoiding such problems, Developer shall have no liability to Customer for any losses associated with such problems.

5. USE OF THIRD PARTY CONSULTANTS. Developer may retain third parties to furnish services to it in connection with the provision of Services. All third parties who perform such work shall execute appropriate documents effecting assignments of all rights with respect to such work, and in undertaking obligations of confidentiality respecting such work.

6. OWNERSHIP.

6.1. Ownership by Customer. All documents, text, photographs, video, pictures, animation, sound recordings, computer programs, and all other works of authorship provided by Customer, together with all images, likenesses, voices, and other characteristics contained therein (collectively, the "Customer Works") shall remain the property of Customer and its licensors. Customer shall also own the Web Site work product produced by Developer as a part of the Services and paid for by Customer to the extent, and only to the extent, that such work product is created using HTML (the "HTML Pages") only after paid in full. Customer hereby grants to Developer the nonexclusive rights and licenses to the Customer Works and HTML Pages that are necessary or appropriate to create, modify, distribute, and display the Web Site as provided in this Agreement, to otherwise perform the Services under this Agreement, and to exercise any rights granted to Developer under this Agreement.

6.2. Ownership by Developer. Other than the Customer Works and HTML Pages, all documents, text, photographs, video,

pictures, animation, sound recordings, computer programs, and all other works of authorship provided, created or produced by Developer or its licensors, together with all images, likenesses, voices, and other characteristics contained therein (collectively, the "Developer Works") shall remain the property of Developer and its licensors. Developer hereby grants to Customer the nonexclusive rights and licenses to the Developer Works that are necessary or appropriate to utilize the Services as provided in this Agreement. In the event that Developer is unable or unwilling to provide Hosting Services, unless the inability or unwillingness is based on force majeure or a failure of Customer to pay Fees and/or Expenses, then Developer agrees to grant to Customer a non-exclusive, limited license to use the executable code of the Developer Works solely for the purposes of providing the online services created by virtue of the Services, provided that such code shall not be salable by the Customer to any third party.

6.3. Ownership Transfers. Each party agrees to take such actions as may be reasonably requested by the other to evidence the transfer of ownership of or license to intellectual property rights described in this Section 6, including but not limited to, the making of further written assignments in a form reasonably requested by the other.

7. WARRANTIES.

7.1. Warranties of Customer. Customer represents and warrants that: (a) Customer has the power and authority to enter into this Agreement; (b) Customer is the owner or licensee of all rights necessary and appropriate to grant the licenses and rights hereunder with respect to the Customer Works and any portions thereof, including, but not limited to, documents, text, photographs, video, pictures, animation, and sound recordings; (c) the Customer Works are original except for material in the public domain and such excerpts from other works as may be included within the written license to Customer of the copyright owners; (d) the Customer Works do not contain any libelous material; (e) the Customer Works do not infringe any trade name, trademark, trade secret, or copyright; (f) the Customer Works do not invade or violate any right of privacy, personal or proprietary right, or other common law or statutory right; (g) the Customer Works do not violate any federal or state statutory provisions relating to obscene or pornographic material; and (h) Customer will not utilize, either directly or indirectly, any web services provided by Developer for the purpose of mass distributing unsolicited e-mails (spam). Customer agrees to defend, indemnify, and hold harmless Developer, its officers, directors, and employees for any losses, costs, damages, liabilities, and expenses (including attorneys' fees and court costs) arising out of any claims, suits or proceedings alleging facts that would be a breach of these warranties.

7.2. Warranties of Developer.

(a) Developer represents and warrants that: (i) Developer has the power and authority to enter into this Agreement; (ii) Developer is the owner or licensee of all rights necessary and appropriate to grant the licenses and rights hereunder with respect to the Developer Works and any portions thereof, including, but not limited to, documents, text, photographs, video, pictures, animation, and sound recordings; (iii) the Developer Works are original except for material in the public domain and such excerpts from other works as may be included within the written license to Developer of the copyright owners; (iv) the Developer Works do not contain any libelous material; (v) the Developer Works do not infringe any trade name, trademark, trade secret, or copyright; and (vi) the

Developer Works do not invade or violate any right of privacy, personal or proprietary right, or other common law or statutory right. Developer agrees to defend, indemnify, and hold harmless Customer, its officers, directors, and employees for any losses, costs, damages, liabilities, and expenses (including attorneys' fees and court costs) arising out of any claims, suits or proceedings alleging facts that would be a breach of these warranties.

(b) EXCEPT AS PROVIDED IN THIS SECTION 7.2, DEVELOPER DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SERVICES OR ANY PRODUCTS PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT RESTRICTED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER. CUSTOMER MAY ALSO HAVE OTHER RIGHTS THAT MAY VARY FROM STATE TO STATE.

8. LIMITATION OF LIABILITY. IN NO EVENT WILL DEVELOPER BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF THE SERVICES OR ANY PRODUCTS PROVIDED UNDER THIS AGREEMENT, EVEN IF DEVELOPER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THAT ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO CUSTOMER. Developer's liability to Customer for actual damages for any cause whatsoever, regardless of the form of the action, will be strictly limited to a maximum of the Fees paid for the prior 12 months.

9. LIMITATIONS OF SERVICE. Unfortunately, computers need routine maintenance and sometimes break down; also, Developer cannot control the timing or volume of attempts to access Developer's server. As a result, Developer does not guarantee that Customer or any third parties will be able to access the Web Site created by Developer at any particular time. Hosting Services are provided on an "as-is, as-available" basis.

10. NONDISCLOSURE AND CONFIDENTIALITY.

(a) Each party hereunder may disclose to the other party certain Trade Secrets and Confidential Information of such party or of such party's associated companies, suppliers, or customers. For purposes of this Agreement, "Trade Secrets" means information which: (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; "Confidential Information" means information, other than Trade Secrets, that is of value to its owner and is treated as confidential; "Proprietary Information" means Trade Secrets and Confidential Information; "Owner" refers to the party disclosing Proprietary Information hereunder, whether such party is Developer or Customer and whether such disclosure is directly from Owner or through Owner's employees or agents; and "Recipient" refers to the party receiving any Proprietary Information hereunder, whether such party is Developer or Customer and whether such disclosure received directly or through Recipient's employees or agents.

(b) Recipient agrees to hold the Proprietary Information disclosed by Owner in strictest confidence and not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Proprietary Information disclosed by Owner to any third party, or utilize the Proprietary Information disclosed by Owner for any purpose whatsoever other than as expressly contemplated by this Agreement. With regard to the Trade Secrets, the obligations in this Section 10 shall continue for so long as such information constitutes a trade secret under applicable law. With regard to the Confidential Information, the obligations in this Section 10 shall continue for the term of this Agreement and for a period of five years thereafter. The foregoing obligations shall not apply if and to the extent that:

(i) The information communicated was already known to Recipient, without obligations to keep such information confidential, at the time of Recipient's receipt from Owner;

(ii) The information communicated was received by Recipient in good faith from a third party lawfully in possession thereof and having no obligation to keep such information confidential; or

(iii) The information communicated was publicly known at the time of Recipient's receipt from Owner or has become publicly known other than by a breach of this Agreement.

11. TERMINATION.

(a) This Agreement shall be effective as of the date it is executed by Customer and Developer and shall remain in force until such time as Developer and Customer have each performed all of their respective obligations hereunder, unless otherwise terminated by either party as provided herein.

(b) Either party may terminate this Agreement upon twenty (20) days written notice to the other party. In addition, Developer shall have the right to immediately stop service in the event Customer fails to make timely (within 15 days of receipt of invoice) payment for such service or violates any of the warranties specified in paragraph 7.1 above. Upon receipt of notice of such termination, Developer shall invoice Client for services performed through the termination date. If Development Services are billed on a flat rate, Client will be billed for a pro rata portion of the amount of Development Services performed up until the termination date. Upon payment by Customer of all invoices, Developer shall collect and deliver to Customer whatever work product and Deliverables then exist in a manner readable by Customer.

12. USE OF PRODUCT BY DEVELOPER. Customer grants to Developer the right to disclose the existence of the Web Site and demonstrate the Web Site, and to use the logos, trademarks, trade names, and trade dress of Customer for the purposes of performing under this Agreement and for the purposes of marketing and advertising Developer's services to others.

13. ENTIRE AGREEMENT. This Agreement supersedes and cancels any previous understandings, representations, or agreements between the parties relating to the subject matter hereof, and expresses the complete and final understanding with respect to the subject matter hereof and supersedes and cancels all previous and contemporaneous written

and oral agreements and communications relating hereto. Sections 2, 3.2, 6, 7, 8, 9, 10, and 20 shall survive termination of this Agreement.

14. ASSIGNMENT. Customer may not assign, transfer or pledge this Agreement, or any interest, license or rights herein, in any manner, without the prior written consent of Developer.

15. INDEPENDENT PRINCIPALS. Developer and Customer are independent principals in all relationships and actions under and contemplated by this Agreement. This Agreement shall not be construed to create any employment relation, partnership, joint venture, or agency relationship between the parties or to authorize any party to enter into any commitment or agreement binding on the other.

16. NON-WAIVER. Any failure by either party to detect, protest, or remedy any breach of this Agreement shall not constitute a waiver or impairment of any such term or condition, or the right of such party at any time to avail itself of such remedies as it may have for any breach or breaches of such term or condition.

17. SEVERABILITY. If any provision hereof is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will continue in full force and effect.

18. FORCE MAJEURE. Neither party shall be in default by reason of any failure in performance of this Agreement if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control or foreseeability of such party, including but not limited to, default by subcontractors or suppliers, acts of God or of the public enemy, U.S. or foreign governmental acts in either a sovereign or contractual capacity, labor, fire, flood, epidemic, restrictions, strikes, and/or freight embargoes.

19. NOTICE. All communications between the parties which are required or permitted to be in writing shall be sent by hand delivery, with receipt obtained, or by prepaid, first class U.S. postal service mail, certified return receipt requested, or by facsimile with confirmation by first class U.S. postal service and sent to the addressed specified in the first paragraph of this Agreement. By written communication, either party may designate a different address for purposes hereof.

20. GOVERNING LAW. This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Kansas without regard to its rules governing conflicts of law. The parties consent to the exclusive jurisdiction of the appropriate state and federal courts for Kansas in all disputes or claims relating to this Agreement.

21. MISCELLANEOUS. This Agreement shall be binding upon and inure to the benefit of each party and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representative of Developer and Customer as of the date first stated above.

"Customer"

By: _____
Name: _____
Title: _____

"Developer"

PEN PUBLISHING INTERACTIVE, INC.

By: _____
Name: _____
Title: _____

EXHIBIT A
TO
WEB SERVICES AGREEMENT

I. a. Development Services shall include:

b. The Development Fees shall be paid in the amount of and in accordance with the following:

II. a. Modification Services shall include, if any,

b. As of the effective date of this Agreement, the current time and materials charges of _____ are:

III. a. Hosting Services shall include:

b. The Hosting Fee shall be paid in the amount of and in accordance with the following:
