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**Pen Publishing Interactive, Inc.  
Web Hosting and Virtual Dedicated Hosting Service Agreement  
Last Revised: July 27, 2010**

**PLEASE READ THIS AGREEMENT CAREFULLY, AS IT CONTAINS IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS AND REMEDIES.**

## **1. OVERVIEW**

This Web Hosting and Virtual Dedicated Hosting Service Agreement (this "Agreement") is entered into by and between PenPublishing.com, Inc., a/an Kansas corporation ("Pen Publishing Interactive, Inc.") and you, and is made effective as of the date of electronic acceptance. This Agreement sets forth the terms and conditions of your use of Pen Publishing Interactive, Inc.'s Web Hosting and Virtual Dedicated Hosting services (the "Services").

Your electronic acceptance of this Agreement signifies that you have read, understand, acknowledge and agree to be bound by this Agreement, along with Pen Publishing Interactive, Inc.'s Universal Terms of Service Agreement, which is incorporated herein by reference.

The terms "we", "us" or "our" shall refer to Pen Publishing Interactive, Inc. The terms "you", "your", "User" or "customer" shall refer to any individual or entity who accepts this Agreement. Nothing in this Agreement shall be deemed to confer any third-party rights or benefits.

Pen Publishing Interactive, Inc., in its sole and absolute discretion, may change or modify this Agreement and any policies or agreements which are incorporated herein, at any time, and such changes or modifications shall be effective immediately upon posting to the Pen Publishing Interactive, Inc. website (this "Site"). You acknowledge and agree that (i) Pen Publishing Interactive, Inc. may notify you of such changes or modifications by posting them to this Site and (ii) your use of this Site or the Services found at this Site after such changes or modifications have been made (as indicated by the "Last Revised" date at the top of this page) shall constitute your acceptance of this Agreement as last revised. If you do not agree to be bound by this Agreement as last revised, do not use (or continue to use) this Site or the Services found at this Site. In addition, Pen Publishing Interactive, Inc. may occasionally notify you of changes or modifications to this Agreement by email. It is therefore very important that you keep your account ("Account") information, including your email address, current. Pen Publishing Interactive, Inc. assumes no liability or responsibility for your failure to receive an email notification if such failure results from an inaccurate or out-of-date email address.

## **2. Description of Services**

Pen Publishing Interactive, Inc. currently provides the Services to its customers for a monthly fee. Pen Publishing Interactive, Inc. will host your website on Pen Publishing Interactive, Inc.'s servers, provided, however, you abide by the terms and conditions set forth herein and in each of Pen Publishing Interactive, Inc.'s policies and procedures available on our web site at [www.PenPublishing.com](http://www.PenPublishing.com).

### **License of Your Website Content**

Pen Publishing Interactive, Inc. grants to you and you accept from Pen Publishing Interactive, Inc., a non-exclusive, worldwide and royalty free license to copy, display, use and transmit on and via the Internet your website content in connection with Pen Publishing Interactive, Inc.'s performance or enforcement of this Agreement.

### **Availability of Services**

Subject to the terms and conditions of this Agreement, Pen Publishing Interactive, Inc. shall attempt to

provide the Services for twenty-four (24) hours per day, seven (7) days per week throughout the term of this Agreement. You agree that from time to time the Services may be inaccessible or inoperable for any reason, including, without limitation:

1. equipment malfunctions;
2. periodic maintenance procedures or repairs that Pen Publishing Interactive, Inc. may undertake from time to time; or
3. causes beyond the control of Pen Publishing Interactive, Inc. or that are not reasonably foreseeable by Pen Publishing Interactive, Inc., including, without limitation, interruption or failure of telecommunication or digital transmission links, hostile network attacks network congestion or other failures.

You agree Pen Publishing Interactive, Inc. has no control of availability of the Services on a continuous or uninterrupted basis.

You further agree that as a normal course of its business, it may be necessary for Pen Publishing Interactive, Inc. to migrate its servers. As a result, even though you may have a dedicated IP, you may be assigned a different IP number. Pen Publishing Interactive, Inc. does not warrant that you will be able to consistently maintain your given IP numbers.

### **Service Uptime Guarantee**

Pen Publishing Interactive, Inc. offers a service uptime guarantee for the Services of 99.9% ("Service Uptime") of available time. If Pen Publishing Interactive, Inc. fails to maintain this level of service availability, you may contact Pen Publishing Interactive, Inc. and request a credit of 5% of your monthly hosting fee from Pen Publishing Interactive, Inc. for that month. The credit may be used only for the purchase of further products and services from Pen Publishing Interactive, Inc., and is exclusive of any applicable taxes. The credit does not apply to service interruptions caused by:

1. periodic scheduled maintenance or repairs Pen Publishing Interactive, Inc. may undertake from time to time;
2. errors caused by you from custom scripting or coding;
3. outages that do not affect the appearance of the website but merely affect access to the website such as FTP and email;
4. causes beyond the control of Pen Publishing Interactive, Inc. or that are not reasonably foreseeable by Pen Publishing Interactive, Inc.; and
5. outages related to the reliability of certain programming environments.

Total Service Uptime shall be solely determined by Pen Publishing Interactive, Inc. and shall be calculated on a monthly basis.

1. other failures.

### **Website Content**

You shall be solely responsible for providing, updating, uploading and maintaining your website and any and all files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through your website, including, without limitation, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, email or other messages, meta tags, domain names, software and text. Your website content shall also include any registered domain names provided by you or registered on behalf of you in connection with the Services. Notwithstanding anything in this Agreement to the contrary, in the event you are using ad-supported hosting, in no event shall your website consist of the following: search results, registration, "thank you", error, email or chat pages, pages comprised primarily of other advertising or pages containing any of the following types of content:

1. pornographic, obscene or excessively profane content;
2. content intended to advocate or advance computer hacking or cracking;
3. gambling;

4. illegal activity;
5. drug paraphernalia; or
6. hate, violence or racial or ethnic intolerance.

### **SSL Certificates**

Except as may be limited by specific products or services, any SSL certificate you purchase from Pen Publishing Interactive, Inc. or its affiliates to use in conjunction with the Services provided by Pen Publishing Interactive, Inc., is intended for its specific use as described in the Subscriber Agreement and will not be exported from the server to be used with any other web hosting service. If you are using an SSL certificate on a website hosted by Pen Publishing Interactive, Inc., Pen Publishing Interactive, Inc. will generate and securely store a corresponding private key.

For security reasons, at no time will Pen Publishing Interactive, Inc. release your private key, even if you request. If you wish to export your SSL certificate for use on a non- Pen Publishing Interactive, Inc. server, you will need to make a request to Pen Publishing Interactive, Inc. no earlier than thirty (30) days after your initial SSL subscription began. After your account with Pen Publishing Interactive, Inc. has been cancelled, you will have thirty (30) days to follow the Secure Certificate Registration Process and request a re-key of the SSL certificate, or your SSL certificate will become invalid.

### **Information Shared with Partners**

As a condition of purchasing and using the Services, you acknowledge and agree Pen Publishing Interactive, Inc. may provide your personal information to their partners, as required to provide the plans for which you are purchasing.

### **3. Your Obligations**

You acknowledge and agree Pen Publishing Interactive, Inc. shall have the right to seek justification in connection with your use of the Services, specifically your purchase of IP addresses, and you shall be obligated to provide any and all information reasonably sought by Pen Publishing Interactive, Inc. pursuant to such justification. You acknowledge and agree you are required to begin using at least ninety percent (90%) of your purchased IP addresses within thirty (30) days of assignment of such IP addresses to you. In the event you do not begin using at least ninety percent (90%) of your assigned IP addresses, you acknowledge and agree Pen Publishing Interactive, Inc. shall have the right to reclaim any unused IP addresses after the expiration of such thirty (30) day period. In connection with such purchase, you acknowledge and agree that your name and justification may be disclosed to certain registries, including, but not limited to, the American Registry of Internet Numbers, in accordance with policies promulgated by any and all such registries and such information may be displayed publicly on the Whois database.

Upon the expiration of your initial hosting service term, your hosting services shall automatically renew for the same period of time and your payment method shall be charged for the renewal term on the renewal date. You acknowledge and agree that in the event you do not desire to automatically renew your hosting services for the same period of time, it is your responsibility and obligation to contact Pen Publishing Interactive, Inc. to notify us to turn off the renewal and your failure to notify Pen Publishing Interactive, Inc., a month-to-month basis shall be deemed acceptance of the renewal term.

You represent and warrant to Pen Publishing Interactive, Inc. that:

1. Your Content does not and shall not contain any content, materials, data, work, trade or service mark, trade name, link, advertising or services that actually or potentially violate any applicable law or regulation;
2. infringe or misappropriate any proprietary, intellectual property, contract or tort right of any person; and
3. that you own your website content and all proprietary or intellectual property rights therein, or have express written authorization from the owner to copy, use and display the content on and within your website.

You also warrant that the website being hosted by Pen Publishing Interactive, Inc. will not be used in connection with any illegal activity. If you are hosting your website on Pen Publishing Interactive, Inc.'s servers, you are responsible for ensuring there is no excessive overloading on Pen Publishing Interactive, Inc.'s DNS or servers. In the event you exceed your allotted bandwidth, compute cycles or disk space and thereby overload Pen Publishing Interactive, Inc.'s DNS or servers, you shall be assessed any and all fees, costs and penalties associated with such overloading. You may not use Pen Publishing Interactive, Inc.'s servers and your website as a source, intermediary, reply to address, or destination address for mail bombs, Internet packet flooding, packet corruption, denial of service, or other abusive activities. Server hacking or other perpetration of security breaches is prohibited and Pen Publishing Interactive, Inc. reserves the right to remove sites containing information about hacking or links to such information. Use of your website as an anonymous gateway is prohibited. Pen Publishing Interactive, Inc. prohibits the use of software or scripts run on its servers that cause the server to load beyond a reasonable level, as determined by Pen Publishing Interactive, Inc. You agree Pen Publishing Interactive, Inc. reserves the right to remove your website temporarily or permanently from its servers if Pen Publishing Interactive, Inc. is the recipient of activities that threaten the stability of its network. Further, if you are using ad-supported hosting, you acknowledge and agree Pen Publishing Interactive, Inc. has the right to terminate your Services in its sole discretion and for any reason, including, but not limited to, your failure or unwillingness to comply with the terms and limitations of this Agreement, specifically, the content and material restrictions set forth in this Agreement. You agree not to engage in unacceptable use of the Services, which includes, without limitation, use of the Services to:

1. disseminate or transmit unsolicited messages, chain letters, unsolicited commercial email, or unreasonably large volumes of email on a daily basis, provided, Pen Publishing Interactive, Inc., in its sole discretion, may permit you, if you have a legitimate purpose and after request, to send more email than Pen Publishing Interactive, Inc.'s standard SMTP relay limit;
2. disseminate or transmit any material that, to a reasonable person may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious;
3. disseminate or transmit files, graphics, software or other material, data or work that actually or potentially infringes the copyright, trademark, patent, trade secret or other intellectual property right of any person;
4. create a false identity or to otherwise attempt to mislead any person as to the identity, source or origin of any communication;
5. export, re-export or permit downloading of any message or content in violation of any export or import law, regulation or restriction of the United States and its agencies or authorities, or without all required approvals, licenses and/or exemptions;
6. interfere, disrupt or attempt to gain unauthorized access to any computer system, server, network or account for which you do not have authorization to access or at a level exceeding your authorization;
7. disseminate or transmit any virus, trojan horse or other malicious, harmful or disabling data, work, code or program;
8. engage in any other activity deemed by Pen Publishing Interactive, Inc. to be in conflict with the spirit or intent of this Agreement or any Pen Publishing Interactive, Inc. policy; or
9. use your server as an "open relay" or similar purposes.

Pen Publishing Interactive, Inc. prohibits the running of a public recursive DNS service on any Pen Publishing Interactive, Inc. server. All recursive DNS servers must be secured to allow only internal network access or a limited set of IP addresses. Pen Publishing Interactive, Inc. actively scans for the presence of public DNS services and reserves the right to remove any servers from the network that violate this restriction.

### **Storage and Security**

At all times, you shall bear full risk of loss and damage to your website and all of your website content. You are entirely responsible for maintaining the confidentiality of your password and account information. You agree you are solely responsible for all acts, omissions and use under and charges incurred with your account or password or in connection with the Site or any of your website content displayed, linked, transmitted through or stored on the Server. You shall be solely responsible for undertaking measures to:

1. prevent any loss or damage to your website content;
2. maintain independent archival and backup copies of your website content;
3. ensure the security, confidentiality and integrity of all your website content transmitted through or

- stored on Pen Publishing Interactive, Inc. servers; and
4. ensure the confidentiality of your password.

Pen Publishing Interactive, Inc.'s shared hosting servers are not an archive and Pen Publishing Interactive, Inc. shall have no liability to you or any other person for loss, damage or destruction of any of your content. The Services are not intended to provide a PCI (Payment Card Industry) compliant environment and therefore should not be considered as one. Pen Publishing Interactive, Inc. shall have no liability to you or any other person for your use of the Services in violation of these terms. You shall at all times use the Services as a conventional and/or traditional website. You shall not use the Service in any way, in Pen Publishing Interactive, Inc.'s sole discretion, that shall impair the functioning or operation of Pen Publishing Interactive, Inc.'s services or equipment. Specifically by way of example and not as a limitation, you shall not use the Services as: (i) a repository or instrument for placing or storing archived files; and/or (ii) placing or storing material that can be downloaded through other websites. You acknowledge and agree that Pen Publishing Interactive, Inc. has the right to carry out a forensic examination in the event of a compromise to your server or account.

If you purchase MS SQL or Managed Backups, you hereby authorize Pen Publishing Interactive, Inc. to log into your server for purposes of installing and configuring the software.

In the event you terminate, moving your website off of the Pen Publishing Interactive, Inc. shared hosting servers is your responsibility. Pen Publishing Interactive, Inc. will not transfer or FTP your website to another provider. In the event your use of the Services is terminated, Pen Publishing Interactive, Inc. will not transfer or manage your Services or your website content.

#### **Storage and Plan Limits**

All web hosting plans, including plans that offer unlimited disk space, are subject to a limit of no more than 500,000 files and folders per account hosting accounts. Any account that exceeds this limit will be issued a network violation warning and subject to suspension if no action is taken by the customer to reduce the number of inodes or files and folders (as the case may be).

All web hosting plans, including plans that offer limited databases, are subject to limits of (i) no more than 1,000 tables per database and (ii) no more than one gigabyte ("GB") of storage per database. Any database that exceeds these limits will be issued a network violation warning and subject to suspension if no action is taken by the customer to reduce the number of tables or gigabytes (as the case may be).

#### **4. Assisted Support Plan**

In the event you elect to purchase Pen Publishing Interactive, Inc.'s Assisted Support Plan (the "AS Plan"), the following terms and conditions shall apply.

Subject to the terms and conditions of this Agreement and each of Pen Publishing Interactive, Inc.'s policies and procedures, Pen Publishing Interactive, Inc. shall use commercially reasonable efforts to attempt to provide the AS Plan on a twenty-four (24) hours per day, seven (7) days per week basis for the duration of the AS Plan purchased. You acknowledge and agree that from time-to-time the AS Plan may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs that Pen Publishing Interactive, Inc. may undertake from time to time; or (iii) causes beyond the reasonable control of Pen Publishing Interactive, Inc. or that are reasonably unforeseeable by Pen Publishing Interactive, Inc., including, without limitation, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures.

You acknowledge and agree Pen Publishing Interactive, Inc. has no control over the availability of the AS Plan on a continuous or uninterrupted basis.

#### **Pen Publishing Interactive, Inc.'s Rights**

Pen Publishing Interactive, Inc. explicitly reserves the right and sole discretion to:

1. modify its pricing, if desired by Pen Publishing Interactive, Inc.;
2. establish limits and guidelines concerning the use of the AS Plan;
3. terminate your use of the AS Plan for use of the AS Plan to unnecessarily or illegally harass Pen Publishing Interactive, Inc. or third parties, non-payment of fees for the AS Plan, activities designed to defame, embarrass, harm, abuse, threaten, slander or harass third parties, activities prohibited by the laws of the United States and/or foreign territories in which you conduct business, activities designed to encourage unlawful behavior by others, such as hate crimes, terrorism and child pornography, activities that are tortious, vulgar, obscene, invasive of the privacy of a third party, racially, ethnically, or otherwise objectionable in the sole opinion of Pen Publishing Interactive, Inc., activities designed to impersonate the identity of a third party, activities designed to harm minors in any way, and other activities whether lawful or unlawful that Pen Publishing Interactive, Inc. determines, in its sole discretion, to be harmful to its other customers, operations, or reputation;
4. terminate your use of the AS Plan if your use of the AS Plan results in, or is the subject of, legal action or threatened or proposed legal action, against Pen Publishing Interactive, Inc. or any of its affiliates or partners, without consideration for whether such legal action or threatened or proposed legal action is eventually determined to be with or without merit; and
5. terminate your use of the AS Plan at any time and for any reason if deemed reasonably necessary by Pen Publishing Interactive, Inc.

Pen Publishing Interactive, Inc. has no obligation to monitor your use of the AS Plan, but reserves the right in its sole discretion to do so.

#### **5. additional support services**

If Pen Publishing Interactive, Inc. determines that requested assistance falls outside the scope of the AS Plan, Pen Publishing Interactive, Inc. shall charge you for its custom support services on a thirty (30) minute incremental basis. Furthermore, if Pen Publishing Interactive, Inc. determines that the additional services may apply, Pen Publishing Interactive, Inc. reserves the right to charge any or all of the fees for such services prior to the commencement of any work being performed.

#### **6. third-party software**

Additionally, in the event you elect to install or seek assistance from Pen Publishing Interactive, Inc. in connection with the installation of any third-party software, the following terms shall apply. You represent and warrant you have the right to use and install the third-party software, and have paid the applicable licensing fees for the third party software, and the third-party software does not and shall not infringe on the intellectual property rights of any other person or entity. You agree to defend, indemnify and hold harmless Pen Publishing Interactive, Inc. and its employees, officers and directors for, from and against any and all claims brought against Pen Publishing Interactive, Inc. and its employees, officers and directors by a third-party alleging the software infringes: (i) the third-party's rights; or (ii) a U.S. patent, trademark, copyright or other intellectual property right. You agree that in such an event you shall pay all resulting costs, damages, expenses and reasonable attorneys' fees that a court awards and settlements incurred by Pen Publishing Interactive, Inc. in connection with any such claims.

If you purchase MS SQL or Managed Backups, you hereby authorize Pen Publishing Interactive, Inc. to log into your server for purposes of installing and configuring the software.

#### **7. titles and headings; independent covenants; severability**

The titles and headings of this Agreement are for convenience and ease of reference only and shall not be utilized in any way to construe or interpret the agreement of the parties as otherwise set forth herein. Each covenant and agreement in this Agreement shall be construed for all purposes to be a separate and independent covenant or agreement. If a court of competent jurisdiction holds any provision (or portion of a provision) of this Agreement to be illegal, invalid, or otherwise unenforceable, the remaining provisions (or portions of provisions) of this Agreement shall not be affected thereby and shall be found to be valid and enforceable to the fullest extent permitted by law.

#### **8. DEFINITIONS; CONFLICTS**

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Universal Terms of Service Agreement. In the event there is a conflict between the provisions of this Agreement and the provisions of the Universal Terms of Service Agreement, the provisions of this Agreement shall control.