



Website Services Agreement

This Website Services Agreement ("**Agreement**") is entered into on _____

(the "**Effective Date**") between Pelican Pointe LLC and its affiliates ("**Developer**") and

 ("**Client**") for the purpose of website design, website development, email and other related services (collectively, "**Services**"). For the purpose of executing this Agreement, the undersigned represents and warrants to Developer that he/she is an authorized representative of Client and is authorized to enter into this Agreement on behalf of Client.

Section 1: Website Services

Client and Developer agree that Developer is being engaged to provide Services that are comparable to the design and functionality explained by Developer as of the Effective Date, which Client hereby accepts and agrees are representative of Services. Client and Developer further agree to the following:

- (a) Client will provide text, graphics, logos, scripts, trademarks, images, documents, data, artwork, and other content (collectively, "**Client Content**") to be used for Services.
- (b) Client will have input on the look and structure of the website's design, but Developer is solely responsible for the final design.
- (c) Modifications to the website's design may be requested by Client so long as any requested modifications do not result

in a significant change or revision from the original agreed upon design, such determination must be at Developer's sole discretion; otherwise, Client must pay a mutually agreed fee for the modifications.

- (d) Developer will provide Services and troubleshooting as necessary to maintain the website operating at a reasonable level of reliability, performance, and professionalism consistent with other similar, commercially viable websites transacting business via the Internet.
- (e) Client's use of Services is based on Developer's currently available functionality and not based on an expectation of future functionality or a change in Services.
- (f) Developer, in its sole discretion, is able to make changes to Services and content, including but not limited to which features are available and how the available features function.
- (g) Once Client chooses to make its website live, the nameservers of the primary domain name utilizing Services must remain pointed at Developer's servers per the instructions provided by Developer.
- (h) Client will be allocated shared server space to be used for the sole purpose of managing content directly related to and solely reflect Client's business; provided, however, Developer must have sole discretion on the server allocation, utilization, software, and functionality, and Client acknowledges, understands, and agrees that Developer is able to make reasonable changes to servers that will affect Services, from time to time.
- (i) Neither this Agreement nor the relationship between Client and Developer will in any manner constitute Work for Hire.

Section 2: Intellectual Property, Copyrights and Trademarks

Client represents to Developer and unconditionally guarantees that any Client Content furnished by Client for inclusion on the website are either owned or properly licensed by Client so that Client and Developer have all permission and legal authority necessary to use Client Content in connection with the Services. Developer agrees that title, ownership, or interest in Client's Content is not being transferred to Developer and remains the property of Client. Developer agrees to make no claim of interest in Client Content.

Developer represents to Client and unconditionally guarantees that any text, graphics, logos, designs, code, source code, scripts, layout, processes, trademarks, images, documents, data, artwork and other content provided by Developer (collectively, "**Developer Content**") and included on the website are owned or properly licensed by Developer so that Developer has all permission and legal authority necessary to use Developer Content in connection with the Services. Client agrees that title, ownership, or interest in Developer's Content is not being transferred to Client and remains the property of Developer. Client agrees to make no claim of interest in Developer Content.

Section 3: Acceptable Use by Client

Client agrees Services and content must be directly related to and solely reflect Client's business and Client's legal company name. Client agrees Services and content must not contain any inappropriate, harassing, offensive, defamatory, false, or misleading material or otherwise be used for any illegal purpose. In situations where functionality is enabled on the website which allows for visitors or third parties to post content on the website, Client must monitor all posts on a regular basis and edit or delete posts which are reasonably determined to be inappropriate, harassing, offensive, defamatory, illegal, false, misleading, or which do not respect right of privacy. Client must not use Services to send email messages or text messages to anyone with whom Client does not have an existing relationship and all communications must be directly related to such relationship. Developer must have full discretion to remove or modify any content or any website user's access which, in Developer's sole discretion, is unsuitable for the purpose or use of Services. Client warrants and represents that Client is not a competitor, directly or indirectly, with Developer, and Client does not provide any services similar to the Services provided by Developer hereunder.

Section 4: Limitation of Liability

EXCEPT AS REQUIRED BY LAW, DEVELOPER MUST NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE PRODUCT AND THE SERVICES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, REVENUE, BUSINESS INTERRUPTION, LOSS OF DATA, AND COMPUTER FAILURE OR MALFUNCTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE THEORY (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) UPON WHICH SUCH CLAIM IS BASED. DEVELOPER IS NOT RESPONSIBLE FOR ANY ACTIVITIES OCCURRING UNDER CLIENT'S ACCOUNT, INCLUDING BUT NOT LIMITED TO ANY LOSS RELATING TO ANY CONTENT CONTAINED ON THE WEBSITE OR LOSS RESULTING FROM ANY UNAUTHORIZED USE OF CLIENT'S PASSWORD OR ACCOUNT. UNDER NO CIRCUMSTANCES WILL DEVELOPER'S COLLECTIVE LIABILITY UNDER THIS AGREEMENT EXCEED THE GREATER OF (i) FIVE HUNDRED DOLLARS (\$500) OR (ii) THE FEES PAID BY CLIENT UNDER THIS AGREEMENT. CLIENT AGREES AND UNDERSTANDS THAT ALL SERVICES, CONTENT, DOCUMENTS, MATERIAL, AND DATA STORED ON THE SERVERS MAY BE LOST DUE TO MECHANICAL ISSUES, SOFTWARE ISSUES, TERRORISM, OR ACTIONS OF THIRD PARTIES, AND MAY REMAIN UNRECOVERABLE. DEVELOPER IS PROVIDING SERVICES WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

Section 5: Design Credit

Client agrees that Developer is able to place text, links, and graphics at the bottom of Client's website recognizing Developer's company, product, and Services. Client further agrees that Client's publicly accessible website may be included in Developer's portfolio as an example of Developer's work and Services. If Client provides Developer a testimonial, Developer will have a non-exclusive, perpetual right to freely use Client's testimonial in any manner and medium.

Section 6: Payment of Fees

Client will pay Developer all fees indicated on the invoice according to the prices and terms applicable to Services. Client will pay a \$20 fee for each returned check or credit card chargeback. Upon thirty (30) days advanced notice to Client via invoice, email, or support ticket, Developer reserves the right to change the price of Services at any time.

In Developer's sole discretion, fees for new Services may be due and payable prior to the initiation of Services. Renewals and other recurring fees will be due and payable prior to the renewal date. If Client is past due on any payments, Developer reserves the right, in its sole discretion, to either cancel all Services provided to Client with no restatement of Services or cancel all Services provided to Client until payment, including any processing or late fees, has been received in full and accepted by Developer. If Developer does not accept Client's payment, Developer will either mark the payment as void or return the payment to Client.

Section 7: Cancellation

- (a) Notification. Client is able to request immediate cancellation of all Services at any time upon notice to Developer by submitting the cancellation form via a support ticket. In addition to any other remedies available under this Agreement, Developer is able to cancel Services upon thirty (30) days advanced written notice to Client via email and support ticket. If Developer determines Client has changed the nameservers of Client's primary domain name to no longer be pointed at Developer's servers, Developer reserves the right to consider the nameserver change to be Client's notification to Developer that all Services have been abandoned and to immediately cancel all Services.
- (b) Effect of Cancellation. Upon cancellation of Services for any reason, either by Developer or by Client, both parties agree that all terms in this Section 7(b) must apply. Client will no longer receive Services or support and will not have access to Services, content, or support tickets. In Developer's sole discretion, any Services or content may be removed from Developer's servers and be unrecoverable. Unless specified otherwise in this Agreement, Client will not be entitled to a refund of fees paid, and any outstanding fees for Services provided by Developer to Client remain due and payable. Developer accepts no liability for Services or content that is cancelled or removed.
- (c) Expenses and Attorneys' Fees. In the event of default due to Client's non-payment of fees or a violation of any term or condition of this Agreement, Developer in its discretion must also have other remedies available at law or equity. If Developer incurs any costs or expenses in connection with an event of default for non-payment, including enforcing any term or condition of this Agreement, Developer must be entitled to collect all reasonable costs of collection and/or enforcement, including but not limited to, reasonable attorneys' fees and expenses.
- (d) Surviving Provisions. Upon cancellation of Services for any reason, either by Developer or by Client, both parties agree that this Agreement must survive in perpetuity and remain in effect following cancellation of Services for any reason, either by Developer or by Client.

Section 8: Force Majeure

Developer will make every effort to keep Client's website operational. However, certain technical difficulties and other factors outside of Developer's control may, from time to time, result in temporary service interruptions. Client agrees to hold harmless and not to hold Developer liable for any of the consequences of such interruptions beyond Developer's control.

Section 9: Nondisclosure

Developer agrees that, except as directed by Client, government agency, or court order, it will not at any time during or after the term of this Agreement disclose any Confidential Information to another party. Client agrees that, except as directed by Developer, government agency, or court order, it will not at any time during or after the term of this Agreement disclose any Confidential Information to another party. For purposes of this Agreement, the term "**Confidential Information**" includes knowledge and items that are nonpublic and otherwise confidential or proprietary to the disclosing party such as: Client Content, Developer Content, information, reports, plans, prices, processes, policies, functionality, source code, software, applications, and other similar materials, in whatever form maintained and/or communicated, that has been or may hereafter be provided or shown between Client and Developer.

Section 10: Indemnification

Client must defend, indemnify, and hold Developer harmless from any and all demands, liabilities, losses, costs, damages, and claims, including reasonable attorneys' fees and expenses related in any way to Client Content and with respect to any action or omission of Client, or its agents, employees, officers, directors, or members, related to the use of the website provided as part of Services, including but not limited to any service provided by or product sold or distributed by Client.

Subject to Section 4 above, Developer must defend, indemnify, and hold Client harmless from any and all demands, liabilities, losses, costs, damages, and claims, including reasonable attorneys' fees and expenses related in any way to Developer Content and use by Developer of the website provided as part of Services in any way not permitted by this Agreement.

Section 11: Warranty of Authorization

Developer and Client represent and warrant that that execution of this Agreement has been duly authorized by appropriate action taken in accordance with the parties' respective articles of incorporation, by-laws, and all other governing law. The parties further represent and warrant that the representatives executing this Agreement on their behalf have all necessary power and authority to execute this Agreement on their behalf.

Section 12: Arbitration

Any disputes in excess of \$500 arising out of this Agreement must be submitted to binding arbitration before a mutually agreed upon Arbitrator suitor in Developer's state of incorporation pursuant to the rules of the American Arbitration Association. The Arbitrator's decision must be final and binding, and any judgment made by an Arbitrator may be entered in any court having jurisdiction thereof.

Section 13: Severability

Client agrees that the terms of this Agreement are severable. If any term or provision is declared invalid by a court of law, the remaining terms, sections, and provisions must continue to be binding and in effect.

Section 14: Sole Agreement

As of the Effective Date, the terms and provisions contained in this Agreement constitute the sole and entire agreement between Developer and Client and supersedes any prior covenants, agreements, promises, terms, or provisions, written or oral, except as set forth herein. This Agreement must be binding upon the parties hereto, their respective heirs, administrators, Website Administrators, personal representatives, executors, successors, assigns, members, and employees.

Section 15: Notice

Unless specified otherwise in this Agreement, any written notices to be given hereunder must be deemed sufficiently given only when delivered via email with receipt confirmed.

Section 16: Governing Law

This Agreement is entered into and must be governed by and construed in accordance with the laws of Developer’s state of incorporation. Any action brought by either party must be brought in State or Federal Court serving Developer’s state of incorporation, and the parties consent to the jurisdiction of such courts and waive any objection as to jurisdiction, venue, or convenience of forum. The parties waive all right to jury by trial of any claim or action arising out of or relating in any way to this Agreement.

Section 17: Modification; Waiver

Neither this Agreement nor any provision hereof will be changed, waived, discharged, or terminated orally. A delay or failure on the part of either party to insist on compliance with any provision hereof must not constitute a waiver of such party's right to enforce such provision.

Section 18: Integration

This Agreement is able to be executed in any number of counterparts, each of which must be deemed an original, but all such counterparts taken together must constitute only one agreement, superseding all prior understandings, oral or written. Each party agrees that this Agreement and any other documents are able to be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents shall have the same effect as manual signatures for the purposes of validity, enforceability, and admissibility.

IN WITNESS WHEREOF, Developer and Client have executed this Agreement as of the day and year indicated.

Client Signature _____ Date _____

Printed Name _____

Company Name _____

City, State _____

Developer Signature _____ Date _____

Printed Name _____

Company Name _____

City, State _____