

## **EMP&A Public Websites' Terms of Use**

Welcome to the websites of the law firm of Erik M. Pelton & Associates, PLLC ("EMP&A"). This Agreement covers your use of the publicly accessible websites [www.tm4smallbiz.com](http://www.tm4smallbiz.com) and [www.erikpelton.com](http://www.erikpelton.com) and subdomains (collectively the "EMP&A websites"). By using the EMP&A websites, you agree to be bound by these terms of service.

Some sections of this Agreement modify very important rights. In those sections, the text is written in all capital letters. As you review this Agreement, please pay particular attention to those sections in all capital letters.

### **1. This Agreement**

The following sections describe the basic parameters of the Agreement, including requirements for eligibility to use the EMP&A websites, modification of this agreement, termination of this agreement, and how EMP&A gives notice of changes to this agreement. **This agreement was last modified on December 17, 2007.**

#### **1.1. The Agreement**

This Terms of Use Agreement ("Agreement") sets forth the legally binding terms for your use of the EMP&A websites. By using one of the EMP&A websites, you agree to be bound by this Agreement. You are only authorized to use the EMP&A websites, whether such use is intentional or not, if you agree to abide by this Agreement, and all other applicable laws. Please read this agreement carefully and save it. If you do not agree with it, you should leave the EMP&A website immediately, and discontinue use of the EMP&A websites.

#### **1.2. Modification of This Agreement**

EMP&A may modify this Agreement from time to time and such modification will be effective upon posting on all of the EMP&A websites. You agree to be bound to any changes to this Agreement when you use a EMP&A website or EMP&A service after any such modification is posted. It is important that you review this Agreement regularly to ensure you are aware of any changes. The current version of this Agreement can always be viewed at [http://www.erikpelton.com/terms\\_of\\_use/](http://www.erikpelton.com/terms_of_use/) and printed from there.

#### **1.3. Termination of This Agreement**

EMP&A may terminate this Agreement without prior notice and at EMP&A's sole discretion. Termination of this Agreement will result in revocation of the license

granted in section 2 of this agreement, and denial of access to one or all of the EMP&A websites. Cause for such termination may include, but is not limited to:

- (a) breaches or violations of the Agreement or other incorporated agreements or guidelines
- (b) requests by law enforcement or other government agencies
- (c) At your request
- (d) discontinuance or material modification to the EMP&A websites or any portion thereof.
- (e) unexpected technical or security issues or problems
- (f) your engagement in fraudulent or illegal activities, whether related to your use of the EMP&A websites or not; or
- (g) nonpayment of any fees you may owe in connection with use of the EMP&A websites, or other EMP&A services.

Further, you agree that EMP&A will make the decision to terminate your account at EMP&A's sole discretion, and that EMP&A will not be liable to you or to any third party for any damages resulting from termination of your account, or loss of access to the EMP&A websites.

#### **1.4. Notices**

EMP&A may provide you with notices, including those regarding changes to this Agreement, at EMP&A's sole discretion, in any manner EMP&A decides, including, but not limited to, posting to one of the EMP&A websites, email or regular mail.

## **2. License Grant**

EMP&A hereby grants you a non-exclusive worldwide right to use the EMP&A websites solely for legitimate business purposes, subject to the terms and conditions of this Agreement.

## **3. Your Obligations**

In consideration of the license granted in Section 2, above, you agree to the following :

### **3.1. Client Conduct**

You agree that you will not use the EMP&A websites to:

- (a) transmit or make available any content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
- (b) harm minors in any way;

- (c) impersonate any person or entity, including, but not limited to, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- (d) transmit or make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation, except in those areas (such as shopping) that are designated for such purpose;
- (e) interfere with or disrupt the EMP&A website or servers or networks connected to the EMP&A website, or disobey any requirements, procedures, policies or regulations of networks connected to the EMP&A website;
- (f) intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law;
- (g) provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organization(s) designated by the United States government as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act;
- (h) collect or store personal data about other users in connection with the prohibited conduct and activities set forth in paragraphs a through m above.

### **3.2. No Resale of Services**

You agree not to reproduce, duplicate, copy, sell, trade, resell, or exploit for any commercial purpose, any portion of the EMP&A websites, use of the EMP&A websites, or access to the EMP&A websites.

### **3.3. No Competitive Use**

You may not use the EMP&A websites if you are affiliated with a competitor to EMP&A, as determined at EMP&A's sole discretion, either as an officer, employee, agent, or other affiliate, without EMP&A's prior written consent. You may not access the EMP&A websites for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive reasons.

## **4. EMP&A's Intellectual Property**

EMP&A owns certain valuable intellectual property included in the EMP&A website. The following describes limitations on your license to use that intellectual property, and your obligations to use it in accordance with that license.

### **4.1. Ownership of the Information**

This website contains information, text, software, photos, video, graphics, music, sounds, and other material (called “Materials”) that are protected by copyrights, trademarks, trade secrets, patents or other proprietary rights (called “Intellectual Property Rights”). These Intellectual Property Rights are valid and protected in all forms, media and technologies existing now or developed later. All right, title, and interest in these Materials belong solely and exclusively to EMP&A.

#### **4.2. Use of the Information and Materials on the Website**

Except as you may be expressly permitted by this Agreement, you may not use, modify, adapt, reformat, download, upload, post, reproduce, broadcast, publish, display, perform, transfer or redistribute any Materials in any form, format or media or by means of any technology without obtaining the prior written authorization of EMP&A, and any other owner of the Intellectual Property Rights in such Materials.

You must have prior written permission from EMP&A to reproduce Materials from the EMP&A website. If you reproduce Materials from the EMP&A website, you must preserve any copyright, trademark or other notices contained in or associated with the Materials. This means, among other things, that if the specific Material you are reproducing does not contain the relevant notices that appear on the website, you must go to the place on the website where such notices appear and copy them into the Materials you are reproducing.

#### **4.3. EMP&A’s Copyrights and Trademarks**

All copyrights and copyrightable materials which are part of EMP&A that are not Member content, including without limitation, the EMP&A logos, designs, text, graphics, pictures, photos, files, software, applications, code, hidden text, databases and other files and the selection and arrangement thereof are COPYRIGHT © 2007 Erik M. Pelton & Associates, PLLC. All Rights Reserved.

Erik M. Pelton & Associates, PLLC, EMP&A, and the EMP&A logo are trademarks of Erik M. Pelton & Associates, PLLC and may not be copied, imitated or used, in whole or in part, without the prior written permission of EMP&A.

### **5. Privacy**

EMP&A takes the privacy of your information very seriously. This section describes the privacy policy, and some important limitations to it.

#### **5.1. EMP&A’s Privacy Policy**

Registration Data and certain other information about you, known as “Personally Identifiable Information,” is subject to our Privacy Policy. By using the EMP&A website, you represent that you have read that Privacy Policy and that you have

accepted its terms. You understand that through your use of the EMP&A website you consent to the collection and use (as set forth in the Privacy Policy) of this information, including the transfer of this information to the United States and/or other countries for storage, processing and use by EMP&A, its affiliates and under certain circumstances, commercial partners. The EMP&A Privacy Policy can be viewed and printed at [http://www.erikpelton.com/privacy\\_policy/](http://www.erikpelton.com/privacy_policy/).

## **5.2. Special Admonitions for International Use**

Recognizing the global nature of the Internet, you agree to comply with all rules regarding online conduct specific to any geographic location in which you use the EMP&A website. You also agree to comply with any applicable United States export rules that may govern the geographic location in which you use the EMP&A website.

## **5.3. Limitation on the Privacy of Your Registration Data and Content**

You agree that EMP&A may access, preserve and disclose your account information and Content if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to:

- (a) comply with legal process;
- (b) enforce the Agreement;
- (c) respond to claims that any Content violates the rights of third parties;
- (d) respond to your requests for customer service;
- (e) protect the rights, property or personal safety of EMP&A, its users and the public.

## **6. Disclaimers and Limitations**

This section includes important disclaimers and limitations on EMP&A's liability.

### **6.1. No Legal Advice**

The content of this website has been prepared by Erik M. Pelton & Associates, PLLC for informational purposes only and should not be construed as legal advice. The content of this website is not intended to be a substitute for legal counsel on any subject matter. Receipt of the information posted on this website does not create a lawyer-client relationship. Readers should not act or refrain from acting on the basis of the information posted on this website without seeking legal or professional advice on the particular circumstances at issue from a lawyer.

### **6.2. No Attorney-Client Relationship**

No attorney-client relationship will be formed based on your use of the Site. Information you provide through the Site will not be treated as confidential or proprietary unless EMP&A expressly agrees to treat such information in such manner. No use of the Site or provision of information via the Site will prevent EMP&A from representing someone else in connection with the matter in question or a related matter.

### **6.3. Disclaimer of Warranties**

**THIS SECTION IS EXTREMELY IMPORTANT. PLEASE READ IT CAREFULLY**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE EMP&A WEBSITES ARE PROVIDED ENTIRELY "AS IS," WITHOUT ANY WARRANTY WHATSOEVER, AND ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ARE HEREBY EXPRESSLY DISCLAIMED, AND YOU HEREBY WAIVE ALL SUCH WARRANTIES.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM EMP&A OR THROUGH OR FROM THE EMP&A WEBSITES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

### **6.4. Limitation of Liability**

**THIS SECTION IS EXTREMELY IMPORTANT. PLEASE READ IT CAREFULLY**

IN NO EVENT SHALL EMP&A, OUR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, SUPPLIERS, AGENTS, AFFILIATES, SUBSIDIARIES, SUCCESSORS OR ASSIGNS BE LIABLE TO ANY PARTY FOR ANY DIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR OTHER INDIRECT (INCLUDING WITHOUT LIMITATION, COST OF COVER) DAMAGES, LOSS OR INJURY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY SERVICES, CONTENT OR OTHER MATERIALS PROVIDED OR AVAILABLE HEREUNDER, OR USE OF ANY OTHER LINKS OR LINKED WEBSITES, EVEN IF WE ARE EXPRESSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STRICT LIABILITY OR OTHER LEGAL BASIS NOW OR HEREAFTER KNOWN.

THE TERM "DAMAGES" INCLUDES, WITHOUT LIMITATION, ATTORNEYS' FEES, LOST PROFITS, PHYSICAL AND/OR PERSONAL INJURY, BUSINESS INTERRUPTION, AND LOSS OF PROGRAMS OR OTHER DATA ON YOUR INFORMATION HANDLING SYSTEM. YOU AGREE AND ACKNOWLEDGE THE ECONOMIC TERMS OF THIS AGREEMENT FAIRLY AND EQUITABLY REFLECT THE FOREGOING ALLOCATION OF RISK AND SUCH ALLOCATION OF RISK IS A MATERIAL INDUCEMENT FOR US TO MAKE AVAILABLE TO YOU OUR WEBSITES AND OTHER CONTENT AND MATERIALS.

#### **6.5. Indemnification**

You agree to indemnify and defend EMP&A and its subsidiaries, affiliates, officers, agents, employees, partners, licensors and licensees from any claim or demand, including attorney's fees and costs, made by any third party due to or arising out of your use of the EMP&A website, your connection with the EMP&A website, or your violation of this Agreement.

#### **6.6. No Third Party Beneficiaries**

You agree that, except as otherwise expressly provided herein, this Agreement does not confer and is not intended to confer any rights or remedies upon any person other than you.

#### **6.7. Non-Transferability and No Right of Survivorship**

You agree that your right to access the EMP&A website is personal and non-transferable.

#### **6.8. Assumption of Risk**

You agree that you must evaluate and bear all risks associated with, the use of any EMP&A websites or services, including any reliance on the accuracy, completeness, or usefulness of such websites or services.

### **7. Dispute Resolution**

This section contains agreements regarding how you and EMP&A will resolve disputes between you, including a clause mandating Arbitration in any dispute, and a clause waiving your rights to pursue a class action against EMP&A, or a class arbitration against EMP&A

#### **7.1. Arbitration**

You and EMP&A each agree to submit to binding arbitration in the event of a dispute, controversy or claim (each, a "Claim") arising out of or in connection with

these Terms of Use, the Privacy Policy, your or EMP&A's rights and obligations under these Terms of Use or the Privacy Policy, the websites or use of the websites.

To the extent you have in any manner violated or threatened to violate EMP&A's intellectual property rights, however, EMP&A may seek injunctive or other appropriate relief in any court in the Commonwealth of Virginia, and you consent to exclusive jurisdiction and venue in such courts.

The arbitration will be held in the Commonwealth of Virginia before one arbitrator on an individual basis and not as a class action. You expressly waive any right you may have to arbitrate a dispute as a class action. You also expressly waive your right to a jury trial. You may select one of the following arbitration organizations and its applicable rules: the National Arbitration Forum, Box 50191, Minneapolis, MN 55405-0191 ([www.arb-forum.com](http://www.arb-forum.com)), or JAMS, Two Embarcadero Center Suite 1100 San Francisco, CA 94111 ([www.jamsadr.com](http://www.jamsadr.com)).

If you fail to select an arbitration organization within 30 days after notice from EMP&A, EMP&A may select the organization. You may obtain a copy of the rules of each organization by contacting the organization. In the event that any Claim cannot be submitted to binding arbitration pursuant to the rules of any such organization, such event shall not affect the enforceability of this clause so long as the Claim may be submitted to binding arbitration with one of the organizations. You and EMP&A shall agree on one arbitrator to conduct the arbitration and the arbitrator shall be selected pursuant to the applicable rules. Each party shall be responsible for its own attorney, expert and other fees, unless such fees are awarded by the arbitrator to the prevailing party.

## **7.2. Arbitration Final**

The arbitrator's award is final and binding on all parties. The Federal Arbitration Act (9 U.S.C. §1 et seq.), and not any state law concerning arbitration, governs all arbitration under this clause. Any court having jurisdiction may enter judgment on the arbitrator's award. If any part of this clause, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. Notwithstanding anything to the contrary contained herein, if the waiver of class action rights contained herein is not enforceable as to any person or persons, the provisions of Section 11.2 of these Terms of Use shall apply to such person or persons only, and all other persons shall continue to be governed by the Arbitration Clause.

## **7.3. No Class Action**

These Terms of Use provide that all Claims will be resolved by binding arbitration and not in court or by jury trial.

IF A CLAIM IS ARBITRATED, YOU GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST THE COMPANY INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS. WITHOUT LIMITATION, THIS INCLUDES GIVING UP YOUR RIGHTS TO BRING OR PARTICIPATE IN A CLASS ACTION AS SET FORTH IN ANY STATE STATUTE.

## **8. Governance**

This section includes several important clauses governing the interpretation of the contract, where and under what law disputes may be adjudicated, and other important aspect of the governance of this agreement.

### **8.1. Entire Agreement**

This Agreement constitutes the final agreement between you and EMP&A. It is the complete and exclusive expression of your agreement on the matters contained herein. All prior and contemporaneous negotiations and agreements between you and EMP&A on matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither you nor EMP&A has relied upon any statement, representation, warranty or agreement of the other party except for those expressly contained in this Agreement.

THERE ARE NO CONDITIONS PRECEDENT TO THE EFFECTIVENESS OF THIS AGREEMENT, OTHER THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT.

### **8.2. Choice of Law, Forum, and Venue**

THE LAWS OF THE COMMONWEALTH OF VIRGINIA, WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES, GOVERN ALL MATTERS ARISING OUT OF OR RELATED TO THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES, INCLUDING, WITHOUT LIMITATION, ITS INTERPRETATION, CONSTRUCTION, PERFORMANCE, AND ENFORCEMENT.

You have agreed in Section 7 to submit to binding arbitration. However, if Section 7 is found not to have legal affect by any court with jurisdiction over this agreement, jurisdiction over actions arising out of or related to this Agreement, and jurisdiction over EMP&A, then if you bring a legal action or proceeding against EMP&A arising out of or related to this Agreement, you agree that you may only

bring such action or proceeding in the United States District Court for the Eastern District of Virginia, or in any court of the Commonwealth of Virginia.

### **8.3. Severability and Waiver**

EMP&A's failure to exercise or enforce any right granted in this Agreement shall not constitute a waiver of such right.

If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, you nonetheless agree that such court should endeavor to give full effect to the parties' intentions as reflected in such provision, and you agree that other provisions of the Agreement remain in full effect.

### **8.4. No Agency**

This Agreement creates no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship between you and EMP&A, and intends no such relationship.

### **8.5. Survival**

Sections 6, 7, and 8 will survive the termination or expiration of this agreement.

### **8.6. Claim Time Limitation**

You agree that regardless of any law to the contrary, any claim or cause of action arising out of or related to use of the EMP&A website, or this Agreement must be filed within one year after such claim or cause of action arises or be forever barred.

### **8.7. Captions Not Binding**

The captions and numbering of this Agreement are a convenience only and have no legal effect.

### **8.8. Attorney Advertising**

This website contains attorney advertising. Prior results do not guarantee a similar outcome.