RFQPro.com	RFQ3
Template for Hosting Agreement	

[PROVIDER NAME]

Terms, Conditions, & Policies

THE PERSON SIGNING THIS DOCUMENT REPRESENTS THAT HE OR SHE HAS COMPLETE AND UNCONDITIONAL AUTHORITY TO ENTER INTO THE AGREEMENT (AS DEFINED BELOW) ON BEHALF OF THE SUBSCRIBER (CLIENT). THIS PERSON ALSO UNDERTAKES THE RESPONSIBILITY TO INFORM ALL EMPLOYEES AND AGENTS THAT WILL USE THE SERVICES OF [PROVIDER NAME], OF THE CONTENTS OF THIS AGREEMENT.

This Agreement establishes the terms and conditions upon which [PROVIDER NAME], hereinafter referred to as PROVIDER, agrees to provide website hosting and related services, hereinafter referred to as the SERVICES, to the subscriber, hereinafter referred to as CLIENT. In consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, [PROVIDER NAME] and the Subscriber agree as follows.

1. ACCOUNT INFORMATION AND ACCEPTANCE

CLIENT acknowledges that all information provided by CLIENT is true and correct to the best of CLIENT's knowledge. CLIENT agrees that the act of signing and submitting an application form for website hosting or using PROVIDER's website hosting services constitutes acceptance of all terms and conditions associated with the services applied for.

This Agreement comprises the entire agreement between the PROVIDER and the CLIENT, and supersedes any prior agreements between the parties with respect to the subject matter of the Agreement. CLIENT agrees to pay and authorizes PROVIDER to charge all fees due using the payment information provided by CLIENT at the time of application.

2. CLIENT RESPONSIBILITIES

CLIENT will use PROVIDER's services in a manner consistent with all applicable local, provincial, state, and federal regulations and laws.

CLIENT agrees, for itself and for it's Users (Users for the purposes of this agreement is defined as its employees and agents):

a) except as otherwise provided herein, CLIENT and its Users will maintain all password and login information, and other information about CLIENT's Account, as strictly confidential and subject to no less protection than the protection afforded Subscriber's own confidential information. For security purposes, PROVIDER recommends that CLIENT change its password(s) often. At no time should CLIENT ever respond to an online request for a password;

b) CLIENT will not permit any person or entity other than its own employees and agents, to use the Services;

3. ALTERATION / REVISION OF AGREEMENT

PROVIDER may revise the terms of this Agreement at any time, and such revision shall be effective ten (10) days after notice of the proposed revision is posted on PROVIDER's website or is sent to customer via e-mail to the address on file in PROVIDER's customer database. CLIENT agrees to review the Agreement periodically to be aware of such revisions. If any such revision is unacceptable to CLIENT, its sole remedy is to cancel/terminate website hosting services in accordance with this Agreement. CLIENT's continued use of PROVIDER's services following the effective date of any such revision to the Agreement shall be conclusively deemed as your acceptance of all such revisions.

4. DISCLAIMER OF WARRANTY & LIMITATION OF LIABILITY

PROVIDER's service is provided on an "as is, as available" basis. PROVIDER gives no warranty, expressed or implied, for the PROVIDER's services, including without limitation, any warranty of merchantability or warranty of fitness for a particular purpose. Any damages incurred by CLIENT due to disruption of service by PROVIDER or its providers shall be expressly limited to the fees paid by CLIENT to PROVIDER for services and shall under no circumstances include reimbursement for losses of income or other consequential damages claimed by CLIENT.

IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS, REVENUE, DATA OR USE, SUFFERED BY CLIENT OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, TORT OR STRICT LIABILITY OR OTHER LEGAL THEORY, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In no event will PROVIDER's liability for any damages, losses and causes of actions whether in contract or tort (including negligence or otherwise) exceed the actual dollar amount paid by CLIENT for the Service which gave rise to such damages, losses and causes of actions during the 12-month period prior to the date the damage or loss occurred or the cause of action arose.

CLIENT and its users recognize that PROVIDER does not offer any rating systems, filtering software or procedures to help CLIENT screen out language or images in email that CLIENT or its Users do not wish to receive through the Services. PROVIDER exercises no controls whatsoever over the content of information passing through its network or equipment. Disputes may arise between CLIENT or its Users and other individuals or entities or between CLIENT and PROVIDER related to such content. Such disputes could involve, among other things, the use or misuse of domain names, the infringement of copyrights, trademarks or other rights in intellectual property, defamation, fraud, and the use or misuse of information. CLIENT and its Users agree that all claims, disputes or wrongdoing that result from, or which are related in any way to, the content of information passing through PROVIDER's network or equipment are CLIENT's sole and exclusive responsibility. Use of the Internet and of the information available through it is at CLIENT's own risk.

5. INDEMNIFICATION

CLIENT agrees that it shall defend, indemnify, save and hold PROVIDER harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against PROVIDER, its agents, its customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by CLIENT, it's agents, employees or assigns. CLIENT agrees to defend, indemnify and hold PROVIDER harmless against liabilities arising out of;

a) any injury to person or property caused by any products sold or otherwise distributed in connection with a PROVIDER server;
b) any material supplied by CLIENT infringing or allegedly infringing on the proprietary rights of a third party and
c) copyright infringement.

6. ASSUMED COMPETENCY

Effective use of PROVIDER's services presumes a certain degree of knowledge and skill on the part of the CLIENT. For example, it is presumed that CLIENT possesses at least a rudimentary knowledge of Internet-related processes and software applications such as e-mail, File Transfer Protocol (FTP), and web-browsing. Creating and publishing a website on PROVIDER's servers will require some knowledge of either HTML programming, the use of HTML editors, or the contracting of the PROVIDER or a third-party service provider. Certain advanced applications may require a certain level of competence with programming applications. PROVIDER will not be held responsible for CLIENT's inability to use PROVIDER's services due to CLIENT's lack of the requisite knowledge and skills.

7. NOTIFICATIONS

PROVIDER relies on e-mail as the primary means of notifying CLIENTs of important system news, problems with CLIENT's accounts or usage of those accounts, billing problems, etc. Any notifications will be e-mailed to CLIENT domain's primary e-mail address and/or to the contact e-mail address provided by CLIENT upon application for services. CLIENT agrees to monitor these e-mail addresses on a regular basis and to respond promptly, if required, to any notifications. CLIENT agrees to notify PROVIDER of any changes to CLIENT's physical or e-mail address, telephone numbers, etc.

8. UP-TIME GUARANTEE

No provider can guarantee 100% server uptime. Servers and systems must be brought down (offline) at times for routine maintenance and upgrades to ensure that CLIENT's website will run and perform optimally. However, PROVIDER strives to keep such service interruptions to a minimum, and, if possible, to give CLIENT advance notice of scheduled maintenance routines. PROVIDER uses only top quality servers, switches, routers, and other networking hardware. As a result, within PROVIDER's own data center that is under its own control and management, an uptime rate of nearly 100% is generally maintained. Of course, there will be times that CLIENT will not be able to reach the server due to traffic conditions on the Internet, problems occurring at PROVIDER's upstream providers facilities, or due to hardware or software component failure. Both of these conditions are entirely out of PROVIDER's control. However, if the problem occurs with PROVIDER's

immediate upstream providers, PROVIDER will do our utmost to have these providers correct the anomaly as soon as possible.

9. PROHIBITED USES

The following content and activities may not be displayed or promoted by CLIENT nor associated in any way with CLIENT's account or PROVIDER's services. PROVIDER shall be the sole arbiter as to what constitutes violation of this provision.

a) Copyrighted material used without permission
b) Material protected by trade secret or other statute
c) Material or activities judged by PROVIDER to be threatening, obscene, disparaging, or hate-related
d) Pornography, nudity, erotica, and sex-related merchandising, including sites that may infer sexual content, or link to adult content elsewhere
e) Content or conduct that makes possible or promotes any illegal or prohibited activity
f) Content that may be damaging to PROVIDER's servers or to any other server on the Internet
g) Pirated software (warez)
h) IRC, IRC Bots, IRC BNC, etc
i) Unsolicited or bulk e-mail (Spam) or e-mail harvesting software or services
j) Illegally distributed MP3 or other copywritten media
k) Links or reference to any of the above

CLIENT and its Users are also expressly prohibited from:

a) Undertaking any activity which harasses, annoys, or otherwise interferes with any person's, group's, or organization's use or enjoyment of the Internet experience
b) Forging or misrepresenting email message headers, whether in whole or in part, to mask the originator of the message
c) Accessing illegally or without authorization computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another individual's system (often known as "hacking")
d) Distributing information regarding the creation of and sending Internet viruses, worms, Trojan horses, pinging, flooding, mail bombing, or denial of service attacks. Also, activities that disrupt the use of or interfere with the ability of others to effectively use the network or any connected network, system, service, or equipment
e) Engaging in activities that are determined to be illegal, including advertising, transmitting, or otherwise making available ponzi schemes, pyramid schemes, fraudulently charging credit cards, and pirating software
f) Engaging in activities, whether lawful or unlawful, that PROVIDER determines to be harmful to its operations, goodwill, or customer relations
g) Posting or transmitting any unlawful, threatening, abusive, libelous, defamatory, obscene, pornographic, profane or otherwise objectionable information of any kind
h) Uploading, posting, publishing, transmitting, reproducing, or distributing in any way, information, software, or other intellectual property owned by a third party without obtaining permission of such third party
i) Uploading, posting, publishing, transmitting, reproducing, or distributing in any way, viruses or other computer code designed to alter or destroy software or data without the knowledge of the person using such computer code, software or data

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10. THIRD PARTY SOFTWARE AND SPECIAL APPLICATIONS

PROVIDER allows CLIENT to install third party software (database programs, cgi scripts, etc.) providing the following conditions are met:

a) Any software installed must not require root access to install, start, or run.
b) Any software must not disrupt other subscribers' use and enjoyment of the server. This might occur if scripts use too much memory, scripts use too many CPU processes, or scripts interfere with users' e-mail.

CLIENT is required to obtain the prior approval of PROVIDER prior to installing any third party software. This approval may not be permanent. If a script is found to disrupt the server in any of the ways mentioned above, PROVIDER reserves the right to temporarily disable the script or the virtual server until the problem can be resolved. PROVIDER reserves the right to disable and/or remove any software/content that our system administrators have found may represent a security risk to the server.

Background daemons in general are prohibited. PROVIDER will consider requests to allow these applications on a case-by-case review basis. If allowed, extra charges will be assessed based on resources and system maintenance needed. IRC, IRC bots, BNC, or MUDs may not be operated on PROVIDER's servers.

CLIENT is free to use any Chat Room software desired provided that source code for each script is provided to and approved by PROVIDER before use. PROVIDER reserves the right to disable any chat room that adversely affects normal server operation.

11. UNSOLICITED E-MAIL (SPAM)

PROVIDER's servers may not be the source, intermediary, or destination address involved in the transmission of unsolicited bulk e-mail (UBE), spam, off-topic newsgroup posts, flames, or "mail bombs," or for the known distribution of computer viruses. CLIENT's domain may not be referenced or traceable in any way as a result of any of the above.

Spam is generally defined as any unsolicited e-mail, post, or facsimile in a newsgroup, e-mail, fax, or other electronic medium. Any UBE (commercial or not) is also considered spam for the purposes of this policy. Mass and unsolicited are not concurrent conditions for spam. One and/or the other is sufficient. In the medium of newsgroups, spam is considered to be any off-topic posting and/or any identical posting to multiple newsgroups. The use of "ghost sites" (web pages setup on ISPs that allow spamming, that directly or indirectly reference customers to domains or IP addresses hosted by PROVIDER in mass e-mailings are also prohibited. Distribution of email to lists purchased from third parties is also considered spam for the purposes of this provision.

If CLIENT operates a service that regularly sends to a bulk solicited e-mail list such as an online newsletter subscription, CLIENT agrees to provide valid, functioning list removal instructions with each and every email distributed to recipients on the list and to validate the list on a frequent basis to ensure that recipients wish to continue their subscription. PROVIDER also recommends that all opt-in list subscriptions be validated by e-mail upon