

## WEB HOSTING AGREEMENT

This Hosting Agreement (this "Agreement") is made and entered into by and between Rotovac Corporation, a Washington corporation with offices at 17905 Bothell Everett Hwy, Mill Creek, WA 98012 (the "Host" or "Rotovac"), and \_\_\_\_\_, a \_\_\_\_\_ corporation or company with offices at \_\_\_\_\_ ("Client") (each being referred to individually as a "Party" and collectively as the "Parties").

### RECITALS

- A. Host is in the business of offering Internet services relating to, among other things, hosting of sites on the World Wide Web portion of the Internet, and Host is willing to provide services to Client on the terms and subject to the conditions set forth below; and
- B. Client desires to engage Host, and Host desires to be engaged by Client, to provide Internet services on the terms and subject to the conditions set forth below.

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Host and Client hereby agree as follows:

### TERMS

This Agreement shall be effective when signed by both Parties (the "Effective Date") and thereafter shall remain in effect for one (1) year, unless earlier terminated as otherwise provided in this Agreement (the "Initial Term"). This Agreement shall automatically be renewed beyond the Initial Term for additional one (1) year terms (each a "Renewal Term") unless earlier terminated as otherwise provided in this Agreement.

### Services.

#### Hosting Services

1. Host agrees to provide Client with services for hosting of a website on the World Wide Web portion of the Internet (the "Website") as set forth or described in SERVICES TO BE PROVIDED hereto (the "Hosting Services"). Host shall provide the Hosting Services so that the Website is accessible to third Parties via the World Wide Web portion of the Internet as specified in this Agreement.
2. Except as expressly provided in this Agreement, Client agrees that Host is responsible only for providing the Hosting Services, and Host is not responsible for providing any other services or tasks not specifically set forth in SERVICES TO BE PROVIDED.
3. To the extent that Client wishes to receive from Host, and Host wishes to provide to Client, services other than the Hosting Services (collectively the "Additional Services"), such Additional Services and the arrangements for their provision shall be set forth in a separate addendum to this Agreement which is duly executed by the Parties (the "Services Addendum"), and the Services Addendum shall be incorporated into, and become a part of this Agreement. (The Hosting Services and the Additional Services will hereinafter be referred to collectively as the "Services").

#### Availability of Website

Unless otherwise expressly indicated on SERVICES TO BE PROVIDED hereto, the Website shall be accessible to third Parties via the World Wide Web portion of the Internet twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of Hosting Services due to causes beyond the control of Host or which are not reasonably foreseeable by Host, including, but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures.

**Additional Storage and Transfer.**

In the event that the Website requires storage and transfer on the Host Server which exceeds the amount of storage included in the Hosting Services, Client may request that Host:

1. Upgrade the level of Hosting Services; or
2. Acquire additional incremental storage to be included in the Hosting Services, on a time and materials basis and in accordance with the fee and payment schedule in SERVICES TO BE PROVIDED. Host shall review all such requests and determine, in consultation with Client, whether it can reasonably comply with such requests, and if so, and at its option, Host shall propose a procedure and budget for complying with such request.

**Services to be Provided.**

1. The Web Hosting Package selected is: CUSTOM MARKETING WEBSITE
2. The cost of Selected Package is \$19.95 per month, to be paid in advance as \$239.40, due at the beginning of each 12 month period.

**Fees and Taxes.**

**Hosting Services Fees**

Client shall pay Host all fees for the Hosting Services in accordance with the applicable fee and payment schedule set forth in SERVICES TO BE PROVIDED. Host expressly reserves the right to change its rates charged hereunder for the Services during any Renewal Term (as defined herein).

**Taxes**

Client shall pay or reimburse Rotovac for all sales, use, transfer, privilege, excise, and all other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the performance by Rotovac under this Agreement; excluding, however, income taxes on profits which may be levied against Rotovac.

**Additional Services Fees**

Unless otherwise agreed in writing, Client shall pay to Host all fees for Additional Services on a time and materials basis as invoiced by Host.

**Failure to Pay**

In the case of a web site hosted on a Rotovac hosting server, failure of Client to remit payment to Rotovac by the invoice due date is cause for removal of the Client's web site files from the Rotovac hosting Server. Client agrees that Rotovac shall not be held liable for such removal or disconnection.

**Late Payment**

Client's failure to pay any fees when due shall be considered a material breach of this Agreement, and Rotovac man, in addition to any rights available to it at law or in equity, do any or all of the following:

1. Assess late charges of the greater of one and one-half (1.5%) per month or the maximum allowable under applicable law.
2. Suspend performance of the Services, and terminate the Agreement without penalty; or
3. Require future payments hereunder to be made in advance of Services being rendered by Rotovac. Any suspension or termination of Services will not relieve Client from paying pas due fees plus late charges and in event of collection enforcement, Client shall be liable for any costs associated with such collection, including but not limited to, legal costs, attorneys' fees, court costs, and collection agency fees.

Initials: _____ Date: _____
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## Refund Policy

1. Setup charges are not refundable under any circumstances.
2. The first Term of service is not refundable under any circumstances
3. Refunds of renewal fees paid to Rotovac shall only be made for fully unused calendar months of service that the Client desires to cancel.
4. Client shall not be entitled to any refund of any monies under any circumstances should this agreement be terminated due to a violation of the terms and services listed in this agreement.

## Warranties.

### Host Warranties

Hosts represents and warrants that:

1. Host has the power and authority to enter into and perform its obligations under this Agreement; and
2. Host's services under this Agreement shall be performed in a workmanlike manner.

### Client Warranties

Client represents and warrants that:

1. Client has the power and authority to enter into and perform its obligations under this Agreement;
2. Client Content does not and shall not contain any content, materials, advertising or services that are inaccurate or that infringe on or violate any applicable law, regulation or right of a third Party, including, without limitation, export laws, or any proprietary, contract, moral, or privacy right or any other third Party right, and that Client owns the Client Content or otherwise has the right to place the Client Content on the Website;
3. Client's use of its Website will not violate any law or regulation of any governmental or regulatory/administrative entity; and,
4. Client has obtained any authorization(s) necessary for hypertext links from the Website to other third Party Websites. Should Client receive notice of a claim regarding the Website, Client shall promptly provide Host with written notice of such claim.

### Client Restrictions

Client represents and warrants that it shall not use the Website or the Services provided to Client to:

1. Send unsolicited mail messages, including the sending of "junk mail" or other advertising material to individuals who did not specifically request such material, who were not previous customers of CLIENT or with whom CLIENT does not have an existing business relationship ("E-mail spam");
2. Engage in harassing behavior, whether through language, frequency or size of email message;
3. Use without authorization or forge e-mail header information;
4. Solicit mail for any other e-mail address other than that of the Client's account with the intent to harass or to collect replies;
5. Create or forwarding "chain letters" or other "pyramid schemes" of any type; and/or,
6. Use unsolicited e-mail originating from within Host's network or the networks of other Internet Service Providers.
7. The content, material, message, and data transmitted or made available through the Services (including Client Content) do not and shall not contain any material that, in Rotovac's good faith judgment, is obscene, threatening, malicious, defamatory, libelous, slanderous, pornographic or which otherwise could expose Rotovac to civil or criminal liability.

**Indemnification.**

**Client**

Client agrees to indemnify, defend, and hold harmless Host, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, at trial and on appeal, to the extent that such action is based upon a claim that:

1. If true, would constitute a breach of any of Client's representations, warranties, or agreements hereunder;
2. Arises out of the negligence or willful misconduct of Client; or,
3. Any of the Client Content to be provided by Client hereunder or other material on the Website infringes or violates any rights of third Parties; including, without limitation, rights of publicity, rights of privacy, patents, copyrights, trademarks, trade secrets, and/or licenses.

**Host**

Host agrees to indemnify, defend, and hold harmless Client, its directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, at trial and on appeal, to the extent that such action arises out of the gross negligence or willful misconduct of Host.

**Notice**

In claiming any indemnification hereunder, the indemnified Party shall promptly provide the indemnifying Party with written notice of any claim which the indemnified Party believes falls within the scope of the foregoing paragraphs. The indemnified Party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying Party shall control such defense and all negotiations relative to the settlement of any such claim and further provided that any settlement intended to bind the indemnified Party shall not be final without the indemnified Party's written consent, which shall not be unreasonably withheld.

**LIMITATION OF LIABILITY.**

HOST SHALL HAVE NO LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, THE WEBSITE OR CLIENT'S DATA FILES, PROGRAMS OR INFORMATION THROUGH ACCIDENT, FRAUDULENT OR UNAUTHORIZED MEANS OR DEVICES. HOST SHALL HAVE NO LIABILITY WITH RESPECT TO HOST'S OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF HOST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF HOST TO CLIENT FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO HOST BY CLIENT UNDER THIS AGREEMENT. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS.

**Force Majeure.**

Neither party shall be deemed in default or otherwise liable under this Agreement due to its inability to perform its obligations by reason of any fire, earthquake, flood, substantial snowstorm, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, act of terrorism, embargo, war, act of God, or any municipal, county, state or national ordinance or law, or any executive, administrative or judicial order (which order is not the result of any act or omission which would constitute a default hereunder), or any failure or delay of any transportation, power, or communications system or any other or similar cause beyond that party's reasonable control.

Initials: _____
Date: _____

**Amendment.**

No amendment, waiver, or modification of this Agreement or any provision of this Agreement shall be valid unless in writing, stating with specificity the particular amendment or modification to be made, and duly executed by the Host and Client.

**Enforceability.**

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, administrative agency or as a result of future legislative action, such holding or action shall be strictly construed and the unenforceable provision shall be deemed severable from the remainder of the Agreement to the extent permitted by law, and the validity or effect of any other provision of this Agreement shall remain binding with the same effect as though the void parts were deleted.

**Miscellaneous.**

This Agreement shall constitute the entire agreement between Client and Rotovac with respect to the subject matter hereof and there are no representations, understandings, or agreements that are not fully expressed in the Agreement. Rotovac may use the name of and identify Client as a Rotovac client, in advertising, publicity, or similar materials distributed or displayed to prospective clients. Rotovac and its personnel, in performance of this Agreement, are acting as independent contractors and not employees or agents of Client. No amendment, change, waiver, or discharge hereof shall be valid unless in writing and signed by the party against which such amendment, change, waiver, or discharge is sought to be enforced. This Agreement shall be governed by the laws of the State of Washington without regard to its conflict of laws provisions, and the exclusive venue for disputes arising out of or related to Agreement shall be the appropriate state Superior court located in the County of King or the County of Snohomish, State of Washington. Client shall not assign, without the prior written consent of Rotovac, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part. The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed a waiver of any further right hereunder. Signatures on a copy of the Agreement or other documents provided pursuant to this Agreement transmitted by facsimile machine shall be binding on the parties and of the same legal effect as original signatures. Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date set forth below.

Date: \_\_\_\_\_ Date: \_\_\_\_\_

CLIENT: \_\_\_\_\_ HOST: ROTOVAC CORPORATION

BY: \_\_\_\_\_ BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_ PRINT NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_ POSITION: \_\_\_\_\_