



SkywardGrafix is an authorized reseller for hosting services provided by Flighthost.com. As such, SkywardGrafix serves as an intermediary for all customer support issues, billing, and terms of service issues regarding the use of the hosting services. By using this service you agree to use this service in accordance with the terms and conditions set forth in both the "Acceptable Use Policy" and the "Web Hosting Service Agreement". You will also hold and treat SkywardGrafix in the same manner as specified for Flighthost.com in these documents.

Below is a 'Web Hosting Service Agreement' that describes the terms and conditions for use of the hosting services. All customers are required to abide by this agreement while using the hosting services sold by SkywardGrafix.

WEB HOSTING SERVICE AGREEMENT

This Web Hosting Agreement (this "Agreement") sets forth the terms and conditions of your use of Flighthost.com for web hosting services. You certify that you are at least 18 years of age. To become a Flighthost.com account holder, you must read and agree to be bound by all terms and conditions of this Agreement, the fee schedules on the Online Order forms and any policies that are or may be published by Flighthost.com. This Agreement will become effective when accepted by Flighthost.com. By posting notice 30 days in advance at a web page available on our web site (<http://skywardgrafix.com>), Flighthost.com may modify the terms and conditions of this Agreement or the prices of its services, as well as discontinue or change the services offered. You will be bound by the modified Agreement, prices and/or policies if you continue to use the services.

1. Scope of Services and Your Obligations

1.1. This Agreement defines the terms and conditions of Flighthost.com's services as offered by SkywardGrafix and used by you, including the provision of web hosting services on Flighthost.com's servers and connectivity to the Internet (the "Services"). Flighthost.com will provide the Services for the amount of server storage space selected in exchange for payment of fees and full compliance with the terms and conditions of this Agreement. In performing the Services, Flighthost.com maintains control and ownership of any and all Internet protocol ("IP") numbers and addresses that may be assigned to you and reserves the right to change or remove any and all IP numbers and addresses at its sole discretion.

1.2. As part of the Services, Flighthost.com will also provide your own web-based control panel (the "Control Panel") containing links to summaries of the Services you have chosen, newsletters and other current information.

1.3. You are responsible for producing, electronically uploading and maintaining HTML files, execution scripts, applets and applications (the "Upload Materials") to your website, and you hereby warrant that all Upload Materials shall be owned or properly licensed by you and shall not adversely impact the Services or violate any rights of any third parties. You are responsible for ensuring that all Upload Materials will function properly and as intended. You are responsible for all activity originating from your website, unless proven to be a victim of outside hacking or address forgery. You assume responsibility for all material on your website that may be put on by a third party (such as the usage of Free For All links pages). Use of the Services requires a certain level of knowledge in the use of Internet languages, protocols, and software, which can vary depending on your anticipated use and desired content of your website, and includes, but is not limited to, the following: web publishing requires knowledge of HTML, properly locating and linking documents, FTPing web contents, graphics, text, sound, image mapping, etc.; FrontPage web publishing requires knowledge of the FrontPage tools as well as Telnet and FTP understanding and capability; CGI-scripts requires knowledge of the UNIX environment, tar and gunzip commands, Perl, CShell scripts, permissions, etc.; and mail requires knowledge of use of mail clients to receive and send mail, etc. You acknowledge that you have the necessary knowledge to create, modify and maintain your website. Flighthost.com assumes no responsibility to provide you with such knowledge. *(SkywardGrafix, if you choose, can also function as your webmaster performing many of the above noted tasks for you.)*

1.4. In connection with the Services, Flighthost.com may provide for your use certain tools and software, including, but not limited to, certain specialty scripting software and/or certain programming language software for designing websites (collectively, the "Tools"). Access to these Tools may be accessed via your

Control Panel. These Tools are copyrighted and proprietary property owned by Flighthost.com. To the extent that such Tools are provided to you, you are granted a nonexclusive, nontransferable license to use the Tools in object-code form only for your internal use, solely in connection with the Services provided under this Agreement.

1.5 Every hosting account with Flighthost.com (sold by SkywardGrafix) features a 30-day money back guarantee. If you choose to cancel your account within the first 30 days and notify us by calling the Customer Service number or using the form located at: http://skywardgrafix.com/close_account.html, we will refund all routine account fees, exclusive of any set up or domain names fees. Accounts closed after 30 days do not qualify for refund of any pre-paid fees.

1.6. For server restoration purposes only, Flighthost.com makes full back-ups of websites weekly, and backups of new/changed data nightly; however, Flighthost.com makes no guarantees of any kind, either expressed or implied, as to the integrity of these back-ups. You are responsible to maintain local copies of your website. If loss of data occurs due to an error of Flighthost.com, Flighthost.com will attempt to recover the data for no charge. Otherwise, Flighthost.com will attempt to recover the data from the most recent archive for a \$50 fee.

1.7. Flighthost.com reserves the right to monitor its systems electronically and to access and disclose any information as permitted or required by any law, regulation or other governmental request to operate its systems properly, to protect itself or its accountholders or for any other reason it in good faith deems necessary. Flighthost.com will fully cooperate with law enforcement authorities in investigating suspected lawbreakers and reserves the right to report to law enforcement any suspected illegal activity it becomes aware of. It is not Flighthost.com's intention that its Services or facilities be used in contravention of the Communications Decency Act of 1996 (the "CDA") or any other applicable law.

1.8. You agree to comply with the requirements of the CDA and the Digital Millennium Copyright Act (the "DMCA") and acknowledge that Flighthost.com is a "service provider" under the DMCA and is therefore immune from liability under the DMCA, including 17 U.S.C. § 512. Consistent with the DMCA, Flighthost.com will accommodate standard technical measures used to identify and protect copyrighted works, and, as further described herein, Flighthost.com has a policy of terminating accountholders who are copyright infringers.

1.9. Websites are unmodified forums containing the personal opinions and other expressions of the persons who post entries on a wide range of topics. Neither the content of websites located on Flighthost.com's servers nor the links to other websites are screened, approved, reviewed or endorsed by Flighthost.com or SkywardGrafix. Flighthost.com is not a publisher of any of the content of websites, or of any content that may be available through the links to and from them, and is acting solely as an Internet web-hosting service provider. The text and other material on such websites are the opinion of the specific author and are not Flighthost.com's statements of advice, opinion or information.

2. Limited Warranty; Limitation of Liability; Indemnification

2.1. **Limited Warranty.** You acknowledge that the Services are provided "as is." Neither Flighthost.com, nor any of its employees or agents, warrants that the Services will be uninterrupted, error free or free from viruses or other harmful components. Flighthost.com is not responsible for and hereby disclaims any warranties, either expressed or implied, regarding the quality, accuracy, or validity of the data and/or completeness, noninfringement, merchantability or fitness for a particular purpose of information available on its servers or residing on or passing through its interconnecting networks. Use of information obtained from or through the Services is at your risk. Under no circumstances will Flighthost.com be liable to you or any other person for any loss or damage caused by your reliance on information available on its servers or obtained through the Services.

2.2. **Limitation of Liability.** IN NO EVENT SHALL Flighthost.com BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND DAMAGES RELATED TO CORRUPTION OR DELETION OF WEBSITE CONTENTS) ARISING OUT OF OR IN RELATION TO THIS AGREEMENT OR YOUR USE OR INABILITY TO USE FLIGHTHOST.COM'S SERVICES (INCLUDING, BUT NOT LIMITED TO, INOPERABILITY OF FLIGHTHOST.COM'S SERVERS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN

IF FLIGHTHOST.COM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL FLIGHTHOST.COM'S MAXIMUM LIABILITY EXCEED THE TOTAL AMOUNT PAID BY YOU TO FLIGHTHOST.COM FOR THE SERVICES DURING THE PRIOR TWELVE (12) MONTHS. TO THE EXTENT APPLICABLE STATE LAW DOES NOT ALLOW THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, FLIGHTHOST.COM'S LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY LAW.

2.3. Indemnification. You agree to indemnify, defend and hold Flighthost.com and its affiliates, directors, officers, employees and agents harmless from and against any liabilities, losses, damages or costs, including reasonable attorneys' fees, resulting from any third-party claim, action, dispute or demand related to your use of the Services, your violation of any of the provisions of this Agreement or from your placement or transmission of any materials or content onto Flighthost.com's servers. Such liabilities may include, but are not limited to, those arising from the following: (a) with respect to your business, (i) infringement or misappropriation of any intellectual property rights; (ii) defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity; or (iii) spamming, or any other offensive, harassing or illegal conduct or violation of the acceptable uses described herein or anti-spam policy; (b) any damage or destruction to Flighthost.com's equipment or to any other account holder, which damage is caused by or otherwise results from acts or omissions by you, your representative(s) or your designees; (c) any personal injury or property damage arising out of your activities related to the Services, unless such injury or property damage is caused solely by Flighthost.com's gross negligence or willful misconduct; and (d) any other damage arising from your equipment or your business.

3. Payment of Fees

3.1. SkywardGrafix will publish a notice of fee increases 30 days before such increases take effect on the web site. A listing of current monthly and/or annual fees can be found at the <http://www.skywardgrafix.com/planchart.html>.

3.2. You agree to provide SkywardGrafix with accurate and complete billing information, including your legal name, address, telephone number, e-mail address and applicable payment date and to update this information immediately if any change occurs. **Payments must be submitted in advance of receiving the Services.**

3.3. You acknowledge that you will be billed (either by mail or electronically) prior to the payment interval you have chosen.

3.4. Delinquent accounts are those that remain unpaid at the beginning of the next Payment Interval. The Services will be suspended after 7 days of your account being delinquent, and Flighthost.com will insert a message at your website indicating your suspension that visitors to your website will see. Notwithstanding any other rights Flighthost.com may have in this Agreement, all of your website contents will be destroyed if your account is delinquent for 21 days. Flighthost.com accounts continue to accrue charges while they are delinquent or if the Services are suspended.

3.5. You acknowledge responsibility for your account until payment in full is made.

3.6. Flighthost.com will not allow any changes to your domain name registration at any time that your account is past due. Accounts closed for non-payment with domain names purchased through Flighthost.com or its agent will forfeit ownership of their domain names until the account is paid in full.

4. Acceptable Uses

4.1. Use and Misuse of the Services. All complaints of abuse, violation and misuse of the Services, whether described in this Section 4 or otherwise, shall be investigated promptly. If you are not sure if your actions will be an abuse, violation or misuse, please ask first: support@skywardgrafix.com.

You are responsible for all use of your website, with or without your knowledge or consent.

You agree to use the Services only for lawful purposes, in compliance with all applicable laws. Illegality includes, but is not limited to, drug dealing; attempting without authorization to access a computer system; pirating (distributing copyrighted material in violation of copyright law, specifically MP3s, MPEGs, ROMs, and ROM emulators); gambling; schemes to defraud; trafficking in obscene material; sending a message or having content that is obscene, lewd, lascivious, filthy, or indecent with intent to annoy, abuse, threaten, or harass another person; threatening bodily harm or damage to individuals or groups; violating

U.S. export restrictions; stalking; or violating other state or federal law, such as the Electronic Communications Privacy Act, the Computer Fraud and Abuse Act, or the Economic Espionage Act. **Linking to illegal material is also prohibited.**

When SkywardGrafix or Flighthost.com becomes aware of possible violations of this Agreement, Flighthost.com may initiate an investigation that may include gathering information from you and the complaining party, if any, and examination of material on Flighthost.com's servers. Flighthost.com, in its sole discretion, will determine what action will be taken in response to a violation on a case-by-case basis. Violations of this Agreement could subject you to criminal or civil liability.

BY ACCEPTING THIS AGREEMENT, YOU AGREE TO WAIVE AND HOLD FLIGHTHOST.COM AND SKYWARDGRAFIX HARMLESS FROM ANY CLAIMS RELATING TO ANY ACTION TAKEN BY FLIGHTHOST.COM OR SKYWARDGRAFIX AS PART OF ITS INVESTIGATION OF A SUSPECTED VIOLATION OF THIS AGREEMENT OR AS A RESULT OF ITS CONCLUSION THAT A VIOLATION OF THIS AGREEMENT HAS OCCURRED. THIS MEANS THAT YOU CANNOT SUE OR RECOVER ANY DAMAGES WHATSOEVER FROM FLIGHTHOST.COM OR SKYWARDGRAFIX AS A RESULT OF FLIGHTHOST.COM'S DECISION TO REMOVE MATERIAL FROM ITS SERVERS, WARN YOU, SUSPEND OR TERMINATE YOUR ACCOUNT, OR TAKE ANY OTHER ACTION DURING THE INVESTIGATION OF A SUSPECTED VIOLATION OR AS A RESULT OF FLIGHTHOST.COM'S CONCLUSION THAT A VIOLATION HAS OCCURRED. THIS WAIVER APPLIES TO ALL VIOLATIONS DESCRIBED IN THIS AGREEMENT.

4.2. Use and Misuse of Materials. Materials in the public domain (e.g., images, text, and programs) may be downloaded or uploaded using the Services. You may also re-distribute materials in the public domain. You assume all risks regarding the determination of whether the material is in the public domain.

You are prohibited from storing, distributing or transmitting any unlawful material through the Services. Examples of unlawful material include, but are not limited to, threats of physical harm, child pornography, and copyrighted, trademarked and other proprietary material used without proper authorization. Pornography and sex-related merchandising, or links to such material, even if legal, are not acceptable uses of Flighthost.com's servers. You may not post, upload or otherwise distribute copyrighted material on Flighthost.com's servers without the consent of the copyright holder.

Unacceptable uses of website content also include the presence of the following programs or the activities associated with them, regardless of whether or not any actual intrusion results in the corruption or loss of data: server broadcast messages or any message sent on an intrusive basis to any directly or indirectly attached network; attempts to circumvent any user authentication or security of host, network, or account; accessing data not intended for user; probing the security of any network; spawning dozens of processes; port scans, ping floods, packet spoofing, and forging router information; denial of service attacks, sniffers, flooding, spoofing, ping bombing, smurfs, winnuke, land and teardrop; promulgation of viruses; and IRC bots, such as eggdrop or BitchX.

Flighthost.com supports free speech on the Internet and will not suspend or cancel your account simply because it disagrees with your views expressed at your website. However, examples of unacceptable activities include posting private information about a person without his or her consent, defaming a person or business, and knowingly making available code that will have a deleterious effect on third-party computers. Where there are allegations that your on-line activity has violated the legal rights of a third party, Flighthost.com will not substitute itself for a court of law in deciding tort claims raised by the third party.

4.3. Email Use. Unacceptable affronts to netiquette and unacceptable activities include, but are not limited to, the following: spamming (sending unsolicited advertising to those with which you have no existing business relationship and posting off-topic advertising in newsgroups); spoofing (using a return email address that is not the valid reply address of the sender or sending an email message that does not contain enough information to enable the recipient to identify you); passive spamming (promoting a website hosted by Flighthost.com by spamming from some other source); trolling (posting controversial messages in newsgroups to generate responses); mailbombing (inundating a user with email without any serious intent to correspond or sending large or multiple files to a user); generating a higher volume of outgoing mail than a normal user (over 10% of available system resources); propagating chain letters; and subscribing someone else to an electronic mailing list without that person's permission. A message is considered

unsolicited if it is posted in violation of a newsgroup charter or sent to a recipient who has not requested the message. Making an email address available to the public does not constitute a request to receive messages. Distribution of mass emailing programs is also prohibited. All recipients on a mailing list must have personally subscribed. Mailing lists may not be used to distribute unsolicited email. If you are repeatedly mailbombed or attract such behavior, the Services will be terminated.

You should not send email to any user who does not wish to receive it, either at Flighthost.com or elsewhere. Flighthost.com recognizes that email is an informal medium; however, you must refrain from sending further email to a user after receiving a request to stop.

You may not alter the headers of email messages to disguise their identity or to prevent users from responding to the messages. Flighthost.com may disclose the usernames of accounts responsible for forged email messages to system administrators or users requesting the information.

Violations of the Flighthost.com policies outlined herein can sometimes result in massive numbers of email responses. If you receive so much email that Flighthost.com's resources are affected, Flighthost.com staff may shut down your mailbox.

4.4. System Security. You are prohibited from utilizing the Services to compromise the security of system resources or accounts on servers at Flighthost.com or at any other site. Use or distribution of tools designed for compromising security or containing viruses or trojans are prohibited. Examples of these tools include, but are not limited to, password guessing programs, cracking tools or network probing tools.

If you are involved in violations of system security, Flighthost.com reserves the right to release all usernames of users involved in such violations to system administrators at other sites in order to assist them in resolving security incidents.

4.5. System Resources. System abuse includes any use of Flighthost.com resources that disrupts the normal use of its servers or services for others. Examples of system abuse include running excessive numbers of processes or consuming excessive amounts of CPU time, memory or disk space.

Any usage of 10% or more of Flighthost.com's system resources is an undue burden on Flighthost.com's system and is unacceptable. If your usage ever exceeds 10% of system resources, your account may be terminated immediately and without prior notice.

Further, running programs in the background on a Flighthost.com server without Flighthost.com's prior written authorization, or running chat rooms, Internet Relay Chat, IRC bots, more than 1,000 emails a day and the like are not acceptable uses of Flighthost.com's servers.

5. Flighthost.com's Right to Terminate Agreement

(a) Flighthost.com reserves the right to suspend or terminate the Services to you and remove or prevent access to any material from your website at any time, without prior notice or liability, for any conduct that Flighthost.com, in its sole discretion, believes violates this Agreement or is otherwise harmful to Flighthost.com's interests or the interests of other accountholders. (b) Flighthost.com also reserves the right to comply with the take-down provisions of the DMCA and to seek injunctive, declaratory, interpleader or other judicial or equitable relief (and, pending such action, to suspend all access to your website) if any third-party claim is made that your website content or use violates any of the acceptable uses or your obligations or representations described in this Agreement.

6. Cancellation of Accounts

6.1. You may cancel your account by calling Customer Service or by using the form located at: http://skywardgrafix.com/close_account.html Accounts closed after 30 days do not qualify for refund of any pre-paid fees.

6.2. All Flighthost.com accounts must be paid in full before the cancellation will be considered complete.

6.3. If your account is suspended or terminated for any reason permitted by this Agreement, Flighthost.com may, at its sole discretion, permanently delete your website contents from Flighthost.com servers, and Flighthost.com will not be able to reopen or restore such content.

7. Arbitration; Governing Law

7.1. Except for Flighthost.com's compliance with take-down provisions of the DMCA or injunctive or other equitable actions initiated by Flighthost.com pursuant to Section 5(b), if any controversy or dispute arises in connection with this Agreement, the Services or your use of Flighthost.com's servers, such controversy or dispute shall first be presented for resolution by Flighthost.com and you. If no resolution is reached within 7 days thereafter, then such controversy or dispute shall be resolved by binding arbitration in Delaware, Ohio, under the then-current rules of commercial arbitration of the American Arbitration Association. Each party shall select an arbitrator with expertise in computer law and the Internet, and these two arbitrators shall select the third arbitrator with such expertise. The validity, terms, performance and enforcement of this Agreement shall be governed and construed by its provisions and in accordance with the laws of the State of Ohio (without regard to conflicts of laws principles).

7.2 You hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the state and federal courts located in Delaware, Ohio, for any action, suit or proceeding arising out of or relating to Section 5(b) of this Agreement and the arbitration contemplated by this Section 7.

8. Miscellaneous

You may not assign your rights and obligations under this Agreement without the prior written consent of Flighthost.com, which may be withheld at Flighthost.com's discretion. Nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The failure of Flighthost.com to require your performance of any provision hereof shall not affect the right to require such performance thereafter; nor shall the waiver by Flighthost.com of a breach of any provision hereof be taken or held to be a waiver of the provision itself. Any action for any claim arising under, or in connection with, this Agreement must be commenced by you within one year after the alleged cause of action has accrued or after the date of termination of this Agreement, whichever is earlier. In the event that any provision of this Agreement is deemed unenforceable or invalid, such unenforceability or invalidity shall not affect the remainder of this Agreement. Such provision may be amended or replaced with one that is valid and enforceable and which achieves, to the extent possible, the original objectives and intent of the parties as reflected in the original provision. No provision of this Agreement may be amended or modified by you except by means of a written document signed or expressly assented to by Flighthost.com. All terms and conditions of this Agreement that should by their nature survive termination of this Agreement shall so survive. This Agreement, the Online Order form, and the Flighthost.com Acceptable Use Policy Statement, together with all amendments or modifications to any of them, constitute the complete and exclusive agreement between you and Flighthost.com and supersede and govern all prior proposals, agreements, or other communications.

SkywardGrafix and Flighthost.com has a responsibility to ensure that each of our clients is provided with the best services we have available. While we back up files continuously, we are in no way responsible for the archiving of a site. **It is the sole responsibility of the site creator to copy, back-up or archive all files that constitute a web site.**