

## SkyBest Internet Services - Terms and Conditions

### **General**

- The benefits of or rights conferred are non-transferable. Use of SkyBest is expressly limited to Customer and Customer's immediate family or direct employees. Account sharing is strictly prohibited and shall be cause for immediate termination of service.
- Customer is responsible for all equipment and software necessary to connect to SkyBest.
- The company is not responsible for any personal computer or network malfunctions and/or damage to the customer's hardware or software.
- Customer agrees to use the service in a manner consistent with any and all applicable laws.
- Use of SkyBest for unsolicited advertising is prohibited.
- Customer is responsible for all use of account(s) and confidentiality of password(s). SkyBest will suspend access or change access to Customer's Account(s) immediately upon notification by Customer that a password has been lost, stolen or otherwise compromised.
- Customer's use of SkyBest services constitute Customer acceptance of Terms and Conditions.

### **Billing**

- Customer is responsible for all local or long-distance telephone charges for connecting directly to SkyBest or indirectly via an intermediate access provider.
- Customer agrees to pay SkyBest all charges relating to use of Customer's Account(s), including any activation or installation fees.
- Sales and use taxes, and all other applicable taxes and levies which are applicable to the provision of services shall be borne by Customer, regardless of whom the taxes and levies are or were imposed upon.
- Access is subject to credit limits established by SkyBest. A credit limit is applied to all accounts. SkyBest may suspend Customer's access to the service if Customer exceeds his/her credit limit unless prior arrangements have been made.
- SkyBest reserves the right to change prices on 30 days' notice.
- All invoices are due upon receipt and payable within thirty (30) days unless other arrangements have been made in advance. SkyBest reserves the right to suspend access to service for Customer's Account(s) upon an indication of credit problems including delinquent payments. A reconnection charge will apply after payment of any outstanding balance.

### **Ownership / Copyright**

- Information available on SkyBest is the property of SkyBest, its Information Providers, or other Customers. Customer shall not redistribute, reproduce, or commercially exploit such information without express written permission of its owner.
- Information Providers shall have the right to assert and enforce such copyright provisions directly on their own behalf.

- Customer submitting information owned by Customer for publication on SkyBest grants SkyBest non-exclusive permission to distribute the information product worldwide. Customer retains all rights he or she may have to such information.

**Warranty Disclaimer** - SkyBest's services are provided on an "as is, as available" basis. SkyBest disclaims any and all warranties with regard to the services (whether express or implied), including without limitation:

- Any implied warranties of merchantability, fitness for a particular purpose, infringement or title;
- Any warranty of quality, functionality, operability, use or performance of the services;
- Any warranty of the accuracy, completeness or validity of the data or information communicated through the services;
- Any warranty of the continuous availability of the services, or that the services will be uninterrupted or error-free.

**Limitations of Liability** - Under no circumstances and under no legal theory (whether tort, contract or otherwise) shall SkyBest be liable for any indirect, special, incidental or consequential damages whatsoever (including, without limitation, damages for business interruption, computer failure or malfunction, loss of profits, goodwill or information, or any other pecuniary loss or damage) arising out of or relating to SkyBest's services (including, without limitation, use or inability to use the services), even if SkyBest has been advised of the possibility of such damages.

Under no circumstances shall SkyBest's cumulative liability to customer exceed the service charges paid by customer to SkyBest for the services during the six (6) months immediately preceding the event for which liability is claimed.

- Neither SkyBest nor its Information Providers are responsible for any damages or injuries arising from Customer's use of SkyBest's services or inability to use SkyBest's services.
- SkyBest is not responsible for undelivered e-mail. There is no guarantee of message receipt or delivery. Return receipts may be requested, but there is no guarantee that the recipient's e-mail system will honor such requests.
- SkyBest is not obligated to store the contents of Customer's e-mail messages and is not obligated to produce copies of e-mail messages to Customer.
- SkyBest is not responsible for Customer's personal files residing on SkyBest's system.
- Customer is responsible for independent backup of all such data. If Customer exceeds the published space limitation for personal files (Web space, e-mail, FTP, etc.), SkyBest will notify the Customer via e-mail to reduce the file storage space. If Customer fails to reduce the storage space within the specified time period, SkyBest reserves the right to delete files from the Customer's personal space without further notice. Customer is hereby warned that some sites accessible via SkyBest allow posting, viewing, retrieval, and/or electronic mailing of materials that may be considered obscene, offensive, inaccurate, incomplete, defamatory, harmful or objectionable. SkyBest is not responsible for Customer's inadvertent or deliberate access to such material and cannot prevent access of such materials.

- Regarding SkyBest High-Speed Broadband Internet service, the company is not responsible for any external intrusion to the customer's network equipment. The customer is responsible for providing firewall protection in an effort to help prevent intrusions. Since this service is an "Always-On" connection, it is the company's recommendation that each customer has appropriate firewall protection on their equipment when using SkyBest High-Speed Broadband Internet service.
- Based upon network availability, SkyBest High-Speed Broadband Internet service is a "best efforts" service, which can provide Up Stream and Down Stream speeds selected by the customer. The actual speed experienced by customers may vary and depend on several factors not limited to but including customer location, the destination on the Internet, traffic on the Internet, interference with a high frequency spectrum on the customer's telephone line and other devices that may be attached to the same cable pair.
- Regular, complete data back-ups are essential maintenance functions that every computer user should perform. SkyBest recommends that customers back-up all of the information on their computer's hard drive(s) prior to a peripheral or software installation or related service. SkyBest will not be responsible for the loss of any information from the computer or hardware that inadvertently fails as a result of hardware and/or software installation performed by customer or by SkyBest. SkyBest is not responsible for any problems with customer's computer following the installation of SkyBest High-Speed Broadband Internet service.

## **Operation**

- SkyBest reserves the right to change its services without notice including but not limited to access procedures, hours of operation, menu structures, commands, documentation and services offered.
- SkyBest reserves the right to delete Customer's personal files which have not been accessed for more than one (1) month.
- SkyBest reserves the right to block new incoming e-mail and the ability to add new files to user storage space if personal storage space exceeds allowed limit.
- Customer understands that SkyBest's services may be interrupted for several reasons, including but not limited to malfunctions, maintenance, and improvement or as required to protect network resources in the event of malfunctions or misuse. Customer understands that it may not receive advance notification of any such interruption of service. Scheduled outages will be publicized online.
- SkyBest shall not be liable for any delay in or failure to perform the services caused by circumstances entirely beyond its control such as those occasioned by acts of God or other causes or which it could not have reasonably foreseen or any other cause, which similarly impedes the provision of service.
- SkyBest reserves the right in its sole discretion to delete any information entered into SkyBest computer systems by Customer. SkyBest and its authorized representatives shall have the right, but shall not be obligated, to edit publicly-viewable information.
- Customer hereby agrees that any material submitted for publication on SkyBest through Customer's Account(s) does not violate or infringe upon any copyright, trademark, patent, statutory, common law or proprietary rights of others, or contain anything obscene, objectionable or libelous.

- SkyBest, at its sole judgment, may immediately suspend Customer's access to the service upon any breach of any of the Terms and Conditions by Customer, including, but not limited to, refusal or failure to pay for services provided or disruptive online behavior.
- SkyBest reserves the right to terminate access to service for any Customer Account(s) which have been inactive for six (6) months or longer.
- Regarding SkyBest High-Speed Broadband Internet service, the company is providing broadband Internet service on a retail basis to the customer. The customer agrees to utilize the service exclusively and not to provide access to third parties either through "sharing" or "Resale."
- Regarding SkyBest High-Speed Broadband Internet service, Web Page HOSTING and caching are services prohibited with a residential broadband Internet connection. Any evidence of the services prohibited would be a breach of these Terms and Conditions, and termination of the broadband Internet connection would occur upon determination of these services being offered. NOTE: Additional charges will apply to businesses that utilize SkyBest High-Speed Broadband Internet service for Web Hosting and caching services.
- Regarding SkyBest High-Speed Broadband Internet service, SkyBest assesses a "web hosting" surcharge to Internet subscribers who are designated as hosting websites for public access. A company or individual will be considered to be "web hosting" if either is hosting a website on its/his/her broadband Internet connection for public access or has a registered domain name and DNS entry assigned to its/his/her specific IP address. Companies or individuals who have broadband Internet service and who are designated as providing "web hosting" services will be charged the business broadband Internet service rate and a surcharge. The downstream broadband Internet service bandwidth rate will be set to 4 Mbps (megabytes per second) and the upstream broadband Internet service bandwidth rate will be set to one (1) Mbps. Currently, a typical broadband Internet service circuit's upstream rate is 512 Kbps. The monthly surcharge fee doubles the upstream bandwidth rate. Since the maximum upstream rate available on a DSL broadband Internet service circuit is one (1) Mbps, customers who desire higher bandwidths must purchase private-line circuits or fiber optic service. Customers who desire greater downstream or upstream bandwidths than what is available with DSL broadband Internet service must purchase a private-line T1 circuit (or any combination thereof), at the tariffed T1 rates. Fiber eligible customers have the option to increase their bandwidth rate with fiber technologies that support a wide array of speed platforms. These customers will be assessed a web hosting surcharge per Meg per month.
- SkyBest may modify these Terms and Conditions upon notice published online. Customer's use of SkyBest after such notice shall constitute Customer acceptance of such modifications.

Revised 9/2011