

FMGateway by FMWebschool Hosting Service Agreement

1. OVERVIEW

This Hosting Service Agreement (this “Agreement”) is entered into by and between FMWebschool, LLC, a/an Delaware limited liability company (“FMWebschool”) and you, and is made effective as of the date of commencement of your hosting account. This Agreement sets forth the terms and conditions of your use of FMWebschool’s Hosting.

The initiation of your hosting account signifies that you have read, understand, acknowledge and agree to be bound by this Agreement, along with FMWebschool’s [Terms of Service](#), which is incorporated herein by reference.

The terms “we”, “us” or “our” shall refer to FMWebschool. The terms “you”, “your”, “User” or “customer” shall refer to any individual or entity who accepts this Agreement. Nothing in this Agreement shall be deemed to confer any third-party rights or benefits.

FMWebschool, in its sole and absolute discretion, may change or modify this Agreement, and any policies or agreements which are incorporated herein, at any time, and such changes or modifications shall be effective immediately upon posting to the FMGateway website (this “Site”). You acknowledge and agree that (i) FMWebschool may notify you of such changes or modifications by posting them to this Site and (ii) your use of this Site or the Services found at this Site after such changes or modifications have been made (as indicated by the “Last Revised” date at the top of this page) shall constitute your acceptance of this Agreement as last revised. If you do not agree to be bound by this Agreement as last revised, do not use (or continue to use) this Site or the Services found at this Site. In addition, FMWebschool may occasionally notify you of changes or modifications to this Agreement by email. It is therefore very important that you keep your account (“Account”) information, including your email address, current. FMWebschool assumes no liability or responsibility for your failure to receive an email notification if such failure results from an inaccurate or out-of-date email address.

2. Description of Services

FMWebschool currently provides the Services to its customers for a monthly fee. FMWebschool will host your website on FMWebschool’s servers, provided, however, you abide by the terms and conditions set forth herein and in each of FMWebschool’s policies and procedures [here](#).

License of Your Server Content

FMWebschool grants to you, and you accept from FMWebschool, a non-exclusive, worldwide and royalty free license to copy, display, use and transmit on and via the Internet your server content in connection with FMWebschool’s performance or enforcement of this Agreement.

Availability of Services

Subject to the terms and conditions of this Agreement, FMWebschool shall use commercially reasonable efforts to provide the Hosting Services on a twenty-four (24) hours a day, seven (7) days a week basis throughout the term of this Agreement. You agree that from time to time, the Hosting Services may be inaccessible or inoperable for any reason, including, without limitation:

1. equipment malfunctions;
2. periodic maintenance procedures or repairs that FMWebschool may undertake from time-to-time; or
3. causes beyond the control of FMWebschool or that are not reasonably foreseeable by FMWebschool, including, without limitation, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures.

You agree FMWebschool has no control of availability of the Hosting Services on a continuous or uninterrupted basis.

You further agree that as a normal course of its business, it may be necessary for FMWebschool to migrate its servers.

Server Content

You shall be solely responsible for providing, updating, uploading and maintaining your server content and any and all files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through your server, including, without limitation, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, email or other messages, meta tags, domain names, software and text. You acknowledge and agree that in the course of providing you with technical assistance, it may be necessary for our support staff to modify, alter or remove the content of your hosted product. Your server content shall also include any registered domain names provided by you or registered on behalf of you in connection with the Hosting Services .

3. Your Obligations

You represent and warrant to FMWebschool that your content does not and shall not contain any content, materials, data, work, trade or service mark, trade name, link, advertising or services that actually or potentially violate any applicable law or regulation or infringe or misappropriate any proprietary, intellectual property, contract or tort right of any person and that you own your server content and all proprietary or intellectual property rights therein, or have express written authorization from the owner to copy, use and display the content on and within your hosting account. You also represent and warrant the server content being hosted by FMWebschool shall not be used in connection with any illegal activity.

You are responsible for ensuring there is no excessive overloading of FMWebschool's DNS system or servers. In the event you exceed your allotted bandwidth and thereby overload FMWebschool's DNS or servers, you shall be assessed any and all fees, costs and penalties associated with such overloading. You may not use FMWebschool's servers and your Server

Account as a source, intermediary, reply to address, or destination address for mail bombs, Internet packet flooding, packet corruption, denial of service, or other abusive activities. Server hacking or other perpetration of security breaches is prohibited and FMWebschool reserves the right to remove sites containing information about hacking or links to such information. Use of your server account as an anonymous gateway is prohibited, as is your use of the Hosting Services to restrict or inhibit any other user from using and enjoying the Internet. You acknowledge and agree FMWebschool has the right to remove your server content temporarily or permanently from its dedicated servers if FMWebschool is the recipient of activities that threaten the stability of its network.

You agree not to engage in unacceptable use of any of the Hosting Services, which includes, without limitation, use of the Hosting Services to:

1. disseminate or transmit unsolicited messages, chain letters, unsolicited commercial email or unreasonably large volumes of email on a daily basis, provided, FMWebschool, in its sole discretion, may permit you, if you have a legitimate purpose and after request, to send more email than FMWebschool's standard SMTP relay limit;
2. disseminate or transmit any material that, to a reasonable person may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious;
3. disseminate or transmit files, graphics, software or other material, data or work that actually or potentially infringes the copyright, trademark, patent, trade secret or other intellectual property right of any person;
4. create a false identity or to otherwise attempt to mislead any person as to the identity, source or origin of any communication;
5. export, re-export or permit downloading of any message or content in violation of any export or import law, regulation or restriction of the United States and its agencies or authorities, or without all required approvals, licenses and/or exemptions;
6. interfere, disrupt or attempt to gain unauthorized access to any computer system, server, network or account for which you do not have authorization to access or at a level exceeding your authorization;
7. disseminate or transmit any virus, trojan horse or other malicious, harmful or disabling data, work, code or program;
8. engage in any other activity deemed by FMWebschool to be in conflict with the spirit or intent of this Agreement or any FMWebschool policy; or
9. use your server as an "open relay" or similar purposes.

Storage and Security

At all times, you shall bear full risk of loss and damage to your files and all of your hosting account content. You are entirely responsible for maintaining the confidentiality of your password and account information. You acknowledge and agree you are solely responsible for all acts, omissions and use under and charges incurred with your account or password or in connection with the server or any of your server content displayed, linked, transmitted through or stored on the server. You shall be solely responsible for maintain independent archival and backup copies of your server content prevent any loss or damage to your ho content

FMWebschool's servers and Hosting Services are not an archive and FMWebschool shall have no liability to you or any other person for loss, damage or destruction of any of your content. The Hosting Services are not intended to provide a PCI (Payment Card Industry) compliant environment and therefore should not be considered as one. FMWebschool shall have no liability to you or any other person for your use of the Hosting Services in violation of these terms. You acknowledge and agree FMWebschool has the right to carry out a forensic examination in the event of a compromise to your account.

In the event you terminate this Agreement or your use of the Hosting Services, moving your server content off of the FMWebschool servers is your responsibility. FMWebschool will not transfer or FTP your server content to another provider. In the event your use of the Hosting Services is terminated, FMWebschool will not transfer or manage your Hosting Services or your server content.

FMWebschool's Rights

FMWebschool explicitly reserves the right and sole discretion to:

1. modify its pricing, if desired by FMWebschool;
2. terminate your use of the hosting account for use of the hosting account to unnecessarily or illegally harass FMWebschool or third parties, non-payment of fees for the hosting account, activities designed to defame, embarrass, harm, abuse, threaten, slander or harass third parties, activities prohibited by the laws of the United States and/or foreign territories in which you conduct business, activities designed to encourage unlawful behavior by others, such as hate crimes, terrorism and child pornography, activities that are tortious, vulgar, obscene, invasive of the privacy of a third party, racially, ethnically, or otherwise objectionable in the sole opinion of FMWebschool, activities designed to impersonate the identity of a third party, activities designed to harm minors in any way, and other activities whether lawful or unlawful that FMWebschool determines, in its sole discretion, to be harmful to its other customers, operations, or reputation;
3. terminate your use of the hosting account if your use of the hosting account results in, or is the subject of, legal action or threatened or proposed legal action, against FMWebschool or any of its affiliates or partners, without consideration for whether such legal action or threatened or proposed legal action is eventually determined to be with or without merit; and
4. terminate your use of the hosting account at any time and for any reason if deemed reasonably necessary by FMWebschool.

FMWebschool has no obligation to monitor your use of the hosting account, but reserves the right in its sole discretion to do so.

4. titles and headings; independent covenants; severability

The titles and headings of this Agreement are for convenience and ease of reference only and shall not be utilized in any way to construe or interpret the agreement of the parties as otherwise

set forth herein. Each covenant and agreement in this Agreement shall be construed for all purposes to be a separate and independent covenant or agreement. If a court of competent jurisdiction holds any provision (or portion of a provision) of this Agreement to be illegal, invalid, or otherwise unenforceable, the remaining provisions (or portions of provisions) of this Agreement shall not be affected thereby and shall be found to be valid and enforceable to the fullest extent permitted by law.

8. DEFINITIONS; CONFLICTS

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Universal Terms of Service Agreement. In the event there is a conflict between the provisions of this Agreement and the provisions of the Universal Terms of Service Agreement, the provisions of this Agreement shall control.