

# Terms of Service (TOS)

Sunday, September 02, 2007

Abella Web Design & Hosting's general policy is to act as a neutral provider of access to the global Internet. Abella Web Design & Hosting reserves the right to suspend or cancel a customers access to any or all services provided by Abella Web Design & Hosting when Abella Web Design & Hosting decides that the account has been used inappropriately.

**IMPORTANT NOTICE: \*All Payments To Abella Web Design & Hosting Are Non-Refundable\***

Abella Web Design & Hosting. ("The Company") agrees to furnish services to the Subscriber, subject to the following TOS (Terms of Service).

Use of Service constitutes acceptance and agreement to Abella Web Design & Hosting's AUP as well as Abella Web Design & Hosting's TOS (Terms of Service).

All provisions of this contract are subject to the TOS (Terms of Service) of Abella Web Design & Hosting and AUP (acceptable use policy). The AUP may be changed from time to time at the discretion of the Company. Subscriber understands that change to the AUP by the Company shall not be grounds for early contract termination or non-payment.

## 1. Disclosure:

The AUP specifically prohibits the use of our service for illegal activities. Therefore, Subscriber agrees that the Company may disclose any and all subscriber information including assigned IP numbers, account history, account use, etc. to any law enforcement agent who makes a written request without further consent or notification to the Subscriber. In addition shall have the right to terminate all service set forth in this Agreement.

## 2. Service Rates:

Subscriber acknowledges that the nature of the service furnished and the initial rates and charges have been communicated to Subscriber. Subscriber is aware that the Company may prospectively change the specified rates and charges from time to time. The promotional offer is contingent upon Company achieving and maintaining its cost of service goals including but not limited to rates charged to company by its suppliers.

## 3. Payment:

Establishment of this service is dependent upon receipt by the Company of payment of stated charges. Subsequent payments are due on the anniversary date of the month for that month's service. Subscriber agrees that The Company automatically charges subscriber's credit card every month. reserves the right to process client credit cards from 1 to 5 days before the actual due date to ensure that the funds are received by the due date.

## 4. Payments and Fees:

Service will be interrupted on accounts that reach 7 days past due. Accounts not paid by due date are subject to suspension from Abella Web Design & Hosting's services. If you desire to cancel your account, please follow the proper procedure to do this as outlined in this TOS.

## 5. Refund and Disputes:

All payments to Abella Web Design & Hosting are nonrefundable. This includes the one time setup fee and subsequent charges regardless of usage. All overcharges or billing disputes must be reported within 30 days of the time the dispute occurred.

## 6. Failure to Pay:

The Company may temporarily deny service or terminate this Agreement upon the failure of Subscriber to pay charges when due.

7. Account Cancellation: All requests for canceling accounts must be made via Abella Web Design & Hosting's billing system.

8. Subscriber acknowledges that the service provided is of such a nature that service can be interrupted for many reasons. Therefore, subscriber agrees that the company shall not be liable for any damages. In no event shall the company be liable for any special or consequential damages, loss or injury.

11. Support Boundaries: Abella Web Design & Hosting, provides support to our subscribers. Abella Web Design & Hosting only ensures that the service is online and is remotely accessible.. does not offer tech support for application specific issues such as cgi programming, html or any other such issue. Does not provide technical support for YOUR customers. We encourage you to use our Ticket System on our web site.

12. SPAM and Unsolicited Commercial Email (UCE): takes a zero tolerance approach to the sending of Unsolicited Commercial Email (UCE) or SPAM over our network. Very simply this means that customers of may not use or permit others to use our network to transact in UCE. Customers of may not host, or permit hosting of, sites or information that is

advertised by UCE from other networks. Violations of this policy carry severe penalties, including termination of service.

a. Violation of 's SPAM policy will result in severe penalties. Upon notification of an alleged violation of our SPAM policy, will initiate an immediate investigation (within 48 hours of notification). During the investigation, may restrict customer access to the network to prevent further violations. If a customer is found to be in violation of our SPAM policy, may, at its sole discretion, restrict, suspend or terminate customer's account. Further, reserves the right to pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. will notify law enforcement officials if the violation is believed to be a criminal offense.

c. As our Customers are ultimately responsible for the actions of their clients over the network, it is advisable that Customers develop a similar, or stricter, policy for their clients.

#### IMPORTANT NOTICE:

Anyone hosting websites or services on their server that support spammers or cause any of our IP space to be listed in any of the various Spam Databases will have their server immediately removed from our network. The service will not be reconnected until such time that you agree to remove ANY and ALL traces of the offending material immediately upon reconnection and agree to allow us access to the account to confirm that all material has been COMPLETELY removed. Severe violations may result in immediate and permanent removal of the server from our network without notice to the customer. Any server guilty of a second violation WILL be immediately and permanently removed from our network without notice.

### 13. Network

a. **IP Address Ownership:** If Abella Web Design & Hosting assigns Customer an Internet Protocol address for Customer's use, the right to use that Internet Protocol address shall belong only to Abella Web Design & Hosting, and Customer shall have no right to use that Internet Protocol address except as permitted by in its sole discretion in connection with the Services, during the term of this Agreement Abella Web Design & Hosting shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to Customer by , and reserves the right to change or remove any and all such Internet Protocol numbers and addresses, in its sole and absolute discretion. Our allocation of IP addresses is limited by ARIN's new policies. These new policies state that use of IP addresses for IP based virtual hosts will not be accepted as justification for new IP addresses. What this means to you is that you MUST use name-based hosting where possible. We will periodically review IP address usage, and if we find that clients are using IP addresses where name-based hosting could be used, we will revoke authorization to use those IP addresses that could be used with name-based hosting.

b. **Bandwidth Usage.** Abella Web Design & Hosting will monitor Customer's bandwidth. Abella Web Design & Hosting shall have the right to take corrective action if Customer's usage negatively impacts other clients.

c. **System and Network Security:** Users are prohibited from violating or attempting to violate the security of the Network. Violations of system or network security may result in civil or criminal liability. will investigate occurrences, which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Users who are involved in such violations. These violations include, without limitation:

- i. Accessing data not intended for such User or logging into a server or account, which such User is not authorized to access.
- ii. Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization.
- iii. Attempting to interfere with service to any user, host or network, including, without limitation, via means of overloading, "flooding", "mail bombing" or "crashing".
- iv. Forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting.
- v. Taking any action in order to obtain services to which such User is not entitled.

### 14. Notification of Violation:

a. Abella Web Design & Hosting is under no duty to look at each customer's or user's activities to determine if a violation of the AUP has occurred, nor do we assume any responsibility through our AUP to monitor or police Internet-related activities.

b. **First violation:** Any User, which determines to have violated any element of this Acceptable Use Policy, shall receive an email, warning them of the violation. The service may be subject at Abella Web Design & Hosting's discretion to a temporary suspension pending a User's agreement in writing, to refrain from any further violations.

c. **Second Violation:** Users that determines to have committed a second violation of any element of this Acceptable Use Policy shall be subject to immediate suspension or termination of service without further notice.

d. We reserve the right, to drop the section of IP space involved in Spam or Denial-of-Service complaints if it is clear that the offending activity is causing great harm to parties on the Internet. In particular, if open relays are on your network or a customer's network, or if denial of service attacks are originating from your network. In certain rare cases, we may have to do this before attempting to contact you. If we do this, we will contact you as soon as is feasible.

15. **Suspension of Service or Cancellation:** Abella Web Design & Hosting reserves the right to suspend network access to any customer if in the judgment of the network administrators the customer's server is the source or target of the violation of any of the other terms of the AUP or for any other reason which Abella Web Design & Hosting chooses. If

inappropriate activity is detected, all accounts of the Customer in question will be deactivated until an investigation is complete. Prior notification to the Customer is not assured. In extreme cases, law enforcement will be contacted regarding the activity. The customer will not be credited for the time the customer's machines were suspended.

16. Abella Web Design & Hosting reserves the right to amend its policies at any time. All Sub-Networks, resellers and unmanaged servers of Abella Web Design & Hosting must adhere to the above policies. Failure to follow any term or condition will be grounds for immediate Cancellation. You will be held responsible for the actions of your clients in the matter described on these Terms and conditions. Therefore, it is in your best interest to implement a similar or stricter Terms and conditions or otherwise called Acceptable Terms of use policy.

17. Indemnification: Abella Web Design & Hosting wishes to emphasize that in agreeing to the Abella Web Design & Hosting Acceptable Use Policy (AUP) and Terms of Service (TOS), customer indemnifies Abella Web Design & Hosting for any violation of the Acceptable Use Policy (AUP) and Terms of Service (ToS) that results in loss to Abella Web Design & Hosting or the bringing of any claim against Abella Web Design & Hosting by any third-party. This means that if Abella Web Design & Hosting is sued because of a customer's or a customer of a customer's activity, the customer will pay any damages awarded against Abella Web Design & Hosting, plus all costs and attorney's fees.

17. Customer acknowledges that the service provided is of such a nature that service can be interrupted for many different reasons and interruptions can be prolonged due to external or internal events. Therefore, subscriber agrees that the Abella Web Design & Hosting shall not be liable for any damages arising from such loss of service for any reason. In no event shall the company be liable for any special or consequential damages, loss or injury.

18. Miscellaneous Provisions: You must provide us with, and keep current, good contact information for you. E-mail, fax, and telephone contacts are used, in that order of preference.

a. A waiver by the Company of any breach of any provision of this Agreement by Subscriber shall not operate as or be construed as a continuing or subsequent waiver thereof or as a waiver of any breach of any other provision thereof.

b. Subscriber shall not transfer or assign this Agreement without the prior written consent of the Company. Company may assign Agreement at anytime without consent from or notice to Subscriber. Company reserves right to cancel customers rights under this contract at anytime without further obligation.

c. Abella Web Design & Hosting takes no responsibility for any material input by others and not posted to the Abella Web Design & Hosting Network by Abella Web Design & Hosting. Abella Web Design & Hosting is not responsible for the content of any other websites linked to the Abella Web Design & Hosting Network; links are provided as Internet navigation tools only. Abella Web Design & Hosting disclaims any responsibility for any such inappropriate use and any liability to any person or party for any other person or party's violation of this policy.

d. Abella Web Design & Hosting is not responsible for any damages your business may suffer. Abella Web Design & Hosting does not make implied or written warranties for any of our services. Abella Web Design & Hosting denies any warranty or merchantability for a specific purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by Abella Web Design & Hosting.

19. Responsibility for Content: You, as Abella Web Design & Hosting's customer, are solely responsible for the content stored on and served by your Abella Web Hosting server.