



1. General:

- 1.1. Abacus America, Inc. (referred to in this document as "Aplus.net") provides each of its services ("Services") to you under the terms set forth in certain agreements with you, each of which incorporates this Terms of Service Agreement (referred to in this document as "TOS") by reference. Any reference to "this TOS" shall be interpreted to mean this TOS and any agreement in which it is incorporated. The Aplus.Net Legal Infringement Policy and Privacy Policy are both hereby incorporated into this TOS by reference. Please carefully read the TOS, the Legal Infringement Policy, the Privacy Policy, and each agreement that is applicable to you.
- 1.2. If we provide or resell certain software or services to you, you understand and agree that you may be bound by additional terms and conditions imposed by applicable third-party resellers or licensors, which are also incorporated herein by reference.
- 1.3. Your use of the Services constitutes your agreement to abide by the laws of the United States and of the state and country in which you reside, including, but not limited to, all intellectual property laws, tariff regulations, export controls, treaties, and international laws.
- 1.4. If you do not agree to abide by this TOS, you are prohibited from using the Services. This TOS is not a complete representation of all of our policies or the implementation of our policies.
- 1.5. We may periodically change, modify, or update this TOS without notice to you. Your continued use of the Services after we post a changed, modified, or updated TOS serves as your acceptance of those updated policies. Please refer to this TOS regularly to remain updated about our current policies.
- 1.6. This TOS was updated on or about September 22, 2008.

2. Restrictions: You agree that you will not use the Services to:

- 2.1. Violate any applicable state or federal law and regulation, including, but not limited to, any copyright, trademark, patent, anti-piracy, or other intellectual property law or regulation, or encourage or enable others to violate any such law or regulation.
- 2.2. Transmit, distribute, post, store, or otherwise traffic in information, software, or materials that is offensive, abusive, inappropriate, malicious, or detrimental, including, but not limited to those that:
 - 2.2.1. Are pornographic, obscene, fraudulent, or discriminatory, including any that contain nudity, profanity, or obscenities.
 - 2.2.2. Encourage, glorify, or promote illegal activity, violence, cruelty, discrimination, network marketing, or Ponzi-type schemes.
 - 2.2.3. Exploit children, facilitate phishing, hacking, or identity theft, or defame, threaten, or harass any person or group.
 - 2.2.4. Infringe upon a third party business, contractual, privacy, or fiduciary rights.
 - 2.2.5. Contain malicious code of any type.

- 2.2.6. Make or facilitate any form of computer, server, or network attack or disruption.
 - 2.2.7. Compromise, disrupt, or degrade the normal and proper operation of any computer or internet system, including Aplus.net's systems.
 - 2.3. Send or post any offensive, abusive, inappropriate, malicious, or detrimental e-mails, forum postings, or instant messages, including, but not limited to, any types of spam or mail-bombs.
- 3. Use:**
 - 3.1. You represent and warrant that the account information that you provided to Aplus.net to open your Aplus.net account, including your name, business name, address, e-mail address, and credit card information, is complete and accurate. In addition, you agree to update your account information no more that fifteen (15) days after any of your account information changes.
 - 3.2. By providing us with your e-mail address, you agree that we may send you service-related or other notices by e-mail rather than by postal mail.
 - 3.3. You agree to maintain the confidentiality of your account, and to not share your account password, security question answers, or any other confidential information about your account with others.
 - 3.4. If you provide us with a business name for your account, we will consider that business to be the owner of the account and may require certain change authorizations from an officer (if a corporation), authorized member (if a limited liability company), partner (if a partnership), or owner (if a sole proprietorship) of the business. If you do not provide us with a business name for your account, we will consider you to be the owner of the account and we may require certain change authorizations from you.
 - 3.5. You understand and agree that (a) Aplus.net or any applicable licensor retains all rights, title, and interest in and to any computer programming, formatting code, operating instructions, or other software used in providing the Services to you ("Programming") and (b) that you will not reverse engineer, disassemble, decompile, or otherwise attempt to derive any source code of the Programming.
- 4. Forum Postings: You understand and agree that:**
 - 4.1. All postings to the Aplus.net Forum ("Forum") are public, not private, communications. You are solely responsible for the content of your Forum postings and you warrant and represent that you your postings will not infringe or violate the rights of any third party.
 - 4.2. Aplus.net may monitor the use of the Forum and the content posted there.
 - 4.3. All submissions, suggestions, concepts, ideas, and content you post to the Forum may be used by Aplus.net for any purpose whatsoever, whether commercial or otherwise, throughout the universe.
 - 4.4. By posting material to the Forum you automatically grant to Aplus.net an irrevocable, perpetual, royalty-free, non-exclusive license to use, translate, reproduce, publish, distribute, sub-license, sell, and/or create derivative uses of such material anywhere, for any purpose, and in any form, medium, or technology now known or later developed throughout the universe.

- 4.5. Aplus.net may remove or block access at any time to any Forum posting that we consider, in our sole discretion, to be a violation of this TOS or the Forum Rules (found at <http://forum.aplus.net/faq.php>). However, we have no obligation to take such action, even if you consider the post to be objectionable or offensive.
- 4.6. Aplus.net may prohibit you from further participation in the Forum if it determines, in its sole discretion, that you have violated this TOS or the Forum Rules or that your behavior is otherwise unacceptable.
- 4.7. Aplus.net does not endorse, has no control over, is not responsible for, and does not guarantee the accuracy of information posted on or the quality of any goods or services sold on any external or third-party website that may be linked to or accessible from a Forum posting.
- 4.8. Any policy or statement contained in any Forum posting (including posting made by Aplus.net employees) which sets forth policies and/or procedures different than those contained in Aplus.net's published policies and agreements shall be null and void.

5. Fees and Billing:

- 5.1. You agree to pay for the Services that you select. The fees may include setup fees, monthly fees, quarterly fees, annual fees, usage fees, web traffic fees, late fees, and other fees.
- 5.2. Applicable setup fees and the fees due for your first service term (first month, first quarter, or first year, etc.) are both due on your initial Services start date. Aplus.net may change the pricing for new Services at any time and for existing services at the beginning of any new billing period.
- 5.3. Dial-up customers will be billed for toll-free and local number access in one minute increments at a rate of \$0.10 per minute. These charges are for line-usage only and dial-up customers may incur additional charges for other Aplus.net Services. Also, dial-up customers may also incur charges for services provide by third parties (such as hotel usage charges).
- 5.4. Payments must be received on or before the due date to ensure uninterrupted services. Aplus.net may charge your account late fees for overdue payments. In addition, your equipment, domains, web content, or other assets may be retained by Aplus.net as collateral for unpaid charges and penalties until such charges and penalties are paid in full.
- 5.5. You are liable for all unpaid amounts due on your account, even if your Services are terminated or cancelled partway through a billing cycle. Aplus.net may charge you interest on unpaid balances at the rate of 1.5% per month or the maximum rate allowed by law. Aplus.net may use a third-party service to collect unpaid amounts and may charge you attorneys, collection, or other reasonable fees incurred to collect unpaid balances.
- 5.6. Aplus.net will not return to you any fees you pay for Services, except that if you are not satisfied with the shared hosting Services or Web Image Services Aplus.net will refund all fees you paid for these Services for the first thirty (30) days after your initial start date for these Services.

- 5.7. If you dispute a charge, you must pay the whole amount to avoid service interruption and notify billing@Aplus.net about the disputed amount. If Aplus.net validates your claim, your account will be credited with the validated amount.
- 5.8. You will be liable for all unfunded term commitments on your account. For example, if you signed up for one (1) year of service and cancel your account (or your account is terminated) after five (5) months, the unpaid fees for the remainder of your term commitment will automatically accelerate and you will immediately become liable for all unpaid charges on your account.
- 5.9. Charges for bundled Services will be “unbundled” if a portion of the bundle of Services is terminated. For example, if you received a free domain name registration when you initiated web hosting and you terminate your web hosting Services before the end of your initial term, you will be charged at that time for the previously bundled domain name registration.
- 5.10. You understand and agree that you are responsible for any network bandwidth, memory over usage, or other overage charges you incur for using the Services, even if such overages arise due to your failure to protect your password or account privacy.
- 5.11. Aplus.net will not review or accept any billing error claims submitted more than ninety (90) days after disputed charges were incurred.
- 5.12. Aplus.net accepts payment by credit card, check, or wire transfer. However, customers paying by check or wire transfer will incur an additional processing fee of \$5.00 for each payment and customers paying by wire transfer will also incur a wire transfer fee of \$10.00 for each payment.

6. Term and Termination:

- 6.1. This TOS will become effective when you click “Accept” to the agreement in which this TOS is incorporated and it will remain in effect until termination by either party under its terms. Termination of this TOS will automatically terminate all agreements into which this TOS is incorporated.
- 6.2. Unless your account is terminated under the terms of this TOS, if you pay for your account by credit card your account will be automatically renewed on the anniversary date (monthly, quarterly, annually, or otherwise, whichever is applicable) (“Anniversary Date”) of the start or last renewal date of your account and your credit card will be charged at that time for Services to be provided through your next Anniversary Date.
- 6.3. You may terminate this TOS at any time upon thirty (30) days notice to Aplus.net by sending a written termination notice to billing@applus.net. You understand and agree that except as otherwise set forth in this TOS or any agreement in which it is incorporated, that no refunds or reimbursements, either in full or pro-rata, will be paid to you at any time.
- 6.3. Aplus.net may terminate this TOS at anytime for any reason without compensation to you upon fourteen (14) days written notice to the address or e-mail address currently on file with Aplus.net. Also, Aplus.net may refuse to open a new account for any person or entity.
- 6.4. Aplus.net may terminate this TOS immediately and without notice or obligation to you if (a) payment for Services is not received by the Anniversary Date of the start or last

renewal date of your account or (b) we determine, in our sole discretion, that you have violated this TOS.

- 6.5. You understand and agree that upon termination of this TOS that Aplus.net has the right to immediately bar your access to or delete any and all content related to your website or account.

7. Limitations:

- 7.1. NEITHER APLUS.NET, NOR ITS PARENTS, SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, DIRECTORS, OFFICERS, CONTRACTORS OR EMPLOYEES WILL BE LIABLE TO YOU UNDER ANY CIRCUMSTANCES FOR ANY THIRD PARTY, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, MULTIPLE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF DATA, LOSS OF USE, OR INTERRUPTION OF BUSINESS) ARISING OUT OF, OR IN CONNECTION WITH, THIS TOS WHETHER BASED IN CONTRACT, WARRANTY, NEGLIGENCE OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, THE FAILURE OF ANY LIMITED OR EXCLUSIVE REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF APLUS.NET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF ANY APPLICABLE AUTHORITY DOES NOT ALLOW THE DISCLAIMER OR LIMITATION OF LIABILITY STATED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY (EXCEPT FOR THE FEES PAYABLE BY YOU TO US) IN THE AGGREGATE WITH RESPECT TO ANY AND ALL BREACHES, DEFAULTS, OR CLAIM OF LIABILITY UNDER THIS TOS FOR AN AMOUNT GREATER THAN THE FEES PAID BY YOU TO US DURING THE ONE (1) MONTH PERIOD PRECEDING A CLAIM GIVING RISE TO SUCH LIABILITY. YOU ACKNOWLEDGE THAT THESE LIMITATIONS ARE AN ESSENTIAL ELEMENT OF THIS TOS AND WITHOUT SUCH LIMITATIONS APLUS.NET WOULD NOT ENTER INTO THIS TOS.
- 7.2. You agree to indemnify, defend by counsel reasonably accepted to Aplus.net, and protect and hold Aplus.net harmless from and against any and all claims, liabilities, losses, costs, damages, expenses, including consultants' and attorneys' fees and court costs, demands, causes of action, judgments, etc. directly or indirectly arising out of or related to the Services.
- 7.3. Nothing in this TOS shall be construed as creating a joint venture, partnership, agency, employment, franchise, or other relationship between you and Aplus.net. Also, neither party to this TOS shall have the right, power or authority to create any obligations or duty, express or implied, on behalf of the other.
- 7.4. WE DO NOT WARRANT THAT THE SERVICES WILL BE FREE OF ERRORS, BE UNINTERRUPTED, OR WILL MEET YOUR REQUIREMENTS. THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND WE EXPRESSLY DISCLAIM ALL WARRANTIES, CONDITIONS, AND INDEMNITIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR ANY OTHER WARRANTY ARISING FROM THE COURSE OF PERFORMANCE OR COURSE OF DEALING. YOU UNDERSTAND AND AGREE THAT WE WILL NOT BE LIABLE FOR ANY TEMPORARY DELAY, OUTAGE, OR INTERRUPTION OF THE SERVICES, AND YOU HAVE NOT ENTERED INTO THIS TOS IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION EXCEPT THOSE SPECIFICALLY SET FORTH HEREIN. ALL SERVICES PROVIDED UNDER THIS TOS WILL BE DEEMED ACCEPTED WHEN DELIVERED.

8. Miscellaneous:

- 8.1. This TOS may not be assigned by you without our express written consent. Aplus.net may assign any or all of its rights and obligations to others at any time.

- 8.2. This TOS is the final expression of the agreement between you and Aplus.net regarding the Services. This TOS may not be modified or amended, nor may it be modified by custom and usage of trade or course of dealing, except by an instrument in writing and signed by you and Aplus.net.
- 8.3. Aplus.net's waiver of your breach of any portion of this TOS shall not operate or be construed as its waiver of any subsequent breach of the same provision or any other portion of this TOS and no remedy available to Aplus.Net hereunder is exclusive of any other remedy available to Aplus.Net hereunder or otherwise available at law or in equity.
- 8.4. If any provision of this TOS or its application is held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this TOS shall remain in full force and effect enforced to fullest extent consistent with applicable law.
- 8.5. You agree that you will not solicit Aplus.net employees as your employees or contractors. You represent and warrant that you have full power to enter into this TOS and any agreement into which this TOS is incorporated by reference.
- 8.6. The section headings contained herein are for reference purposes and convenience only and shall not in any way affect the meaning or interpretation of this TOS.
- 8.7. Aplus.net shall not be deemed to be in default of or to have breached any provision of this TOS as a result of any delay, failure in performance or interruption of the Services, resulting directly or indirectly from acts of God, acts of civil or military authority, civil disturbance, war, strikes or other labor disputes and disturbances, fire, transportation contingencies, shortages of facilities, fuel, energy, labor or materials, or laws, regulations, acts or order of any government agency or official thereof, other catastrophes, or any other circumstances beyond our reasonable control.
- 8.8. This TOS shall be binding on you and Aplus.net and your or its successors and assigns, and shall be governed by the laws of the state of Kansas without giving effect to such laws' provisions regarding conflict of laws. Any action arising out of or related to this TOS shall be brought in the Kansas state courts located in Johnson County, Kansas, USA or the Federal court located in Kansas City, Kansas, USA and each party consents to the jurisdiction and venue of these courts. Each party expressly disclaims application of the United Nations Convention on Contracts for the International Sale of Goods to this TOS.
- 8.9. Sections 1.2, 3.2, 3.5, 4.1-4.8, 5.1, 5.4-5.6, 5.8-5.12, 6.3, 6.6, 7.1-7.4, 8.3, 8.5, 8.6, 8.8, and 8.9 shall survive termination of this TOS.