

ABLESPARK'S TERMS OF SERVICE

Last Updated January 24, 2020

1. PURPOSE

This sets forth the Terms of Service that will govern all work performed by AbleSpark for its Clients. The term "Client(s)" refers to any person, organization, or legal entity that receives, or has received, any products or services of any kind from AbleSpark. AbleSpark is a trade name wholly owned by KABAM Inc. of Maryland.

2. UPDATES TO ABLESPARK'S TERMS OF SERVICE

AbleSpark's Terms of Service may be updated from time-to-time as necessary due to changes in AbleSpark's policies or in response to Acts of Law. Changes to these Terms of Service will be considered effective when they are published on the AbleSpark website. AbleSpark will make a reasonable effort to notify each Client by email when an update to these Terms of Service is made. However, it is the Client's responsibility to review AbleSpark's Terms of Service periodically, and if they are not agreeable to the Client, to cancel any services provided by AbleSpark to the Client.

3. ASSIGNMENTS TO ABLESPARK

Projects and tasks to be completed by AbleSpark will be defined by one or more Work Orders, Contracts, or Service Agreements and shall hereinafter be referred to as "Agreement(s)". All Agreements that currently exist between AbleSpark and the Client, as well as any Agreements made between AbleSpark and the Client in the future, shall automatically be governed by the latest version of AbleSpark's Terms of Service as published on the AbleSpark website.

4. PAYMENTS

Payments will be made as specified in each Agreement. The grant of any license or right of copyright for the deliverables for any Agreement is conditioned on the receipt of full payment for all services rendered. The Terms of all invoices will be Net 30 unless otherwise agreed to by both AbleSpark and the Client in writing. Payments will be considered timely if they are received or post marked by the due date printed on the invoice.

5. LATE PAYMENT FEES

Payments that are not received or post marked by their due date will be subject to a late fee of \$5 or 7% of the payment amount that is past due ("Late Payment Fees"), whichever is greater. Additional Late Payment Fees will be levied against past due amounts at 60 days and 90 days past due.

6. FAILURE TO PAY

Failure to pay includes, but is not limited to, not paying an invoice by its due date, missing a payment milestone defined in any Agreement, the presentment of checks which are dishonored for any reason, declined credit cards, or partial payments unless otherwise permitted in writing.

If the Client fails to make payment as agreed, AbleSpark reserves the right to suspend or cancel any services provided to the Client without warning. AbleSpark also reserves the right to pursue any appropriate collection action allowed by law without notice to the Client. In the event that AbleSpark pursues any collection action(s), the Client shall be responsible for all costs, expenses, and legal fees incurred therein.

Failure to pay a Domain Registration invoice by its due date will result in the automatic forfeiture of any rights that the Client has in that domain. Domain Registrations whose payments are overdue will be will automatically transferred to and ownership vested in AbleSpark.

7. EXPENSES

Unless explicitly covered in an Agreement, the Client shall reimburse AbleSpark for all costs and expenses incurred in the course of performing the agreed work, including, but not limited to the payment of any sales taxes due.

8. ESTIMATES ONLY

The Client acknowledges that all prices, costs, and expenses quoted in any Agreement are estimates only. AbleSpark shall have the right to exceed these estimates by 10% without permission from the Client.

9. RESTART FEE

Agreements with outstanding requests from AbleSpark that have not been completed by the Client within 45 days of request shall be considered dormant. Dormant Agreements will incur a \$500 restart fee which is payable before work will resume.

10. ELECTRONIC INVOICING

The Client expressly agrees to accept electronic delivery of all invoices including, but not limited to, e-mail notification and the posting of the Client's invoices in AbleSpark's online billing system.

11. TECHNOLOGY USED

AbleSpark will use the design and development techniques that it deems appropriate for each Agreement. AbleSpark reserves the right to charge additional fees to employ specific design and development techniques or software requested by the client.

12. CONTENT PROVIDED BY CLIENT

All content provided by the client should be complete and in an appropriate digital format. Examples of appropriate digital formats include:

- Microsoft Word, OpenOffice.org Writer, ASCII text files, and PDF for text;
- MP3 and WAV files for audio;
- JPEG, GIF, Adobe Illustrator, EPS, and PDF for images.

Additional fees will apply to edit previously received content and to convert content into an appropriate format if necessary.

13. TESTING ON OLDER BROWSERS AND DEVICES

All web-based work is tested using recent versions of FireFox and Chrome. Testing and modifications for other browsers or devices, including older versions of FireFox and Chrome, are subject to additional fees.

14. ACCEPTABLE USE OF SERVICES

The Client expressly agrees to not to use any of AbleSpark's hosting or email services to engage in activities, whether lawful or unlawful, that AbleSpark determines to be harmful to its clients, operations, reputation, goodwill, or customer relations. Prohibited uses include, but are not limited to, sending unsolicited email (SPAM), distributing copyrighted material, distributing adult content, sex-related merchandising, distributing pirated software, and attempting to undermine or cause harm to a server or another customer of AbleSpark. If AbleSpark is made aware of any content or action that is determined to be, in AbleSpark's sole discretion, a violation of our Acceptable Use of Services, AbleSpark has the right, but not the obligation, to edit, remove, or deny access to such content or services without notice. AbleSpark may disclose any content or records concerning your account as required to satisfy any law, regulation, governmental request, or court order.

15. MUTUAL CONFIDENTIALITY

AbleSpark recognizes and acknowledges that each Agreement creates a confidential relationship between AbleSpark and Client and that information concerning Client's business affairs, customers, vendors, finances, properties, methods of operation, computer programs, and documentation, and other such information, whether written, oral, or otherwise, is confidential in nature. Furthermore, the Client recognizes and acknowledges that information concerning AbleSpark's Client's business affairs, customers, vendors, finances, properties, methods of operation, computer programs, and documentation, and other such information, whether written, oral, or otherwise, is confidential in nature. All such information concerning the Client and AbleSpark is hereinafter collectively referred to as "Confidential Information". Information shall not be considered confidential if it is already publicly known through no act of either AbleSpark or the Client.

16. MUTUAL NON-DISCLOSURE

AbleSpark agrees that, except as directed by the Client, it will not at any time during or after the term of of any Agreement disclose any Confidential Information to any person whatsoever, except as required by law. Upon the termination of each Agreement, AbleSpark will turn over to the Client all documents, papers, and other materials in its possession or control that were provided by the Client during the execution of that Agreement. Furthermore, the Client agrees that, except as directed by AbleSpark, it will not at any time during or after the term of any Agreement disclose any Confidential Information to any person whatsoever. However, to the extent that AbleSpark pursues collection or any other legal action against the Client, or is required to defend against legal action brought against it, AbleSpark shall not be prohibited from releasing Confidential Information to the extent that same may be necessary to advance its position before a court or other tribunal.

17. RIGHTS TO DEVELOPMENT

All inventions, creations, computer programs and code, software, documentation, specifications, training materials, modifications to software or documentation and all other computer code and/or programs,

writings, designs, and specifications developed by AbleSpark as part of any Agreement, as well as all papers, records, sound recordings, pictorial reproductions, drawings or other graphical representations, and any other work product and the like prepared, produced or delivered by AbleSpark in the performance of services for any Agreement, shall hereinafter be referred to as "Works." AbleSpark shall own all worldwide right, title, and interest, including copyright, trademark, patent and other intellectual property rights (collectively called the "Intellectual Property Rights") in the Works and in all other material discovered, developed, learned, created, produced, or provided by AbleSpark (or its employees or subcontractors) under all Agreements. AbleSpark shall provide the Client a worldwide, royalty-free, non-exclusive, transferable and perpetual right and license to use the Works upon final payment for the deliverables.

18. NO SOLICITATION BY THE CLIENT

While AbleSpark is performing any services for the Client, and for a period of one (1) year after the termination all Agreements made between AbleSpark and the Client, the Client agrees that it will not, on its behalf, or on behalf of any other person or entity, directly or indirectly, solicit, attempt to solicit, hire, attempt to hire, employ, attempt to employ, associate or attempt to associate in business with any person employed by AbleSpark or any person who has left the employ of AbleSpark within the preceding three (3) months, or discuss any potential employment or business association with such persons, regardless of who initiates the discussion or how the persons come to the Client's attention, without written permission from AbleSpark. Additionally, the Client shall not attempt to or actually recruit, solicit or induce any employees of AbleSpark to terminate their employment with, or otherwise cease their relationship with AbleSpark. In the event that the Client unknowingly does approach or is approached by an employee of AbleSpark, the Client agrees to cease and desist all negotiations and/or contact with them upon notification of the violation by AbleSpark. Use of general employment advertising and independent employment agencies, if not directed at one or more of AbleSpark's employees, shall not constitute solicitation for the purposes herein.

19. SOFTWARE LICENSES AND UNAUTHORIZED USE

Client acknowledges and agrees that all software used to fulfill the deliverables of any Agreement remains subject to the terms of its respective license. All software created by AbleSpark is licensed for non-exclusive use as part of the deliverables and may not be modified, duplicated, sold, transferred, assigned, or used in any other manner without the express written permission of AbleSpark. Furthermore, the Client will indemnify and hold harmless AbleSpark against all claims and expenses arising from uses of which the Client does not have rights to or authority to use. The Client will be responsible for payment of any special licensee or royalty fees resulting from use of programs that require such payments.

20. DEVELOPER WARRANTIES

AbleSpark represents and warrants that the deliverables for each Agreement will not knowingly: (a) violate any law or regulation, including, without limitation, the laws and regulations governing export control; (b) be defamatory or libelous; (c) be pornographic or obscene; or (d) contain any viruses, Trojan horses, worms, time bombs or other computer programming devices which are intended to damage a user's system or data or prevent the user from using same.

AbleSpark further represents and warrants that (a) it will use commercially reasonable efforts to insure that all deliverables substantially conform to the acceptance criteria specified in that deliverable's Agreement for

a period of thirty (30) days after the deployment of the deliverable, provided Client makes no changes to the deliverable, the server, the hardware or any technology related to any of them; and (b) there is no outstanding contract, commitment, or agreement to which AbleSpark is a party or legal impediment of any kind known to AbleSpark which conflicts with the deliverable's Agreement or might limit, restrict or impair the rights granted hereunder.

21. CLIENT WARRANTIES

Client represents and warrants that Agreements made between AbleSpark and the Client will not knowingly: (a) violate any law or regulation, including, without limitation, the laws and regulations governing export control; (b) be defamatory or libelous; (c) be pornographic or obscene; or (d) contain any viruses, Trojan horses, worms, time bombs or other computer programming devices which are intended to damage a user's system or data or prevent the user from using same.

Client further represents and warrants that (a) Client has all rights necessary for the production, distribution, exhibition and exploitation of the deliverables contained within each Agreement and (b) there is no outstanding contract, commitment or agreement to which Client is a party or legal impediment of any kind known to Client which conflicts with any Agreement or might limit, restrict or impair the rights granted hereunder.

22. LIMITATION OF LIABILITY

Client agrees that AbleSpark, and its agents, servants or employees shall not be liable for any incidental or consequential damages that arise from AbleSpark's performance of any Agreement or AbleSpark's failure to perform any aspect of any Agreement in a timely manner. Furthermore, AbleSpark disclaims all implied warranties, including the warranty of merchantability and fitness for a particular use.

23. INTEGRATED AGREEMENT

The Client agrees that the latest executed Agreement, along with these Terms of Service, represent the entire agreement between the Client and AbleSpark regarding the subject matter of that Agreement; and supersedes all prior representations, understandings, or agreements regarding the subject matter of that Agreement.

24. SEVERABILITY

The Client agrees that if any of the terms or conditions of their Agreement with AbleSpark or these Terms of Service are properly found to be invalid or unenforceable by a government body, the remaining terms or conditions of the Client's Agreement with AbleSpark shall not be affected by the finding and shall continue to apply.

25. TERMINATION BY CLIENT

To terminate any Agreement, the Client must submit a written request via postal mail, email, or fax that includes the Client's legal name, address, contact information, signature, and the reason for termination. All termination requests must be received by AbleSpark at least 30 days prior to the renewal date of the Agreement being cancelled. Upon receipt of the Client's termination request, AbleSpark will cancel the Agreement specified by the Client and will stop all work. The acceptance of a termination request by

AbleSpark does not relieve the Client from any fees due for services rendered prior to the receipt of the termination request or relieve the Client from any amounts due on a minimum length contract. The Client agrees that by terminating an Assignment with AbleSpark, Client has already received all services, rights, and other obligations owed by AbleSpark under the Agreement.

26. TERMINATION BY ABLESPARK

AbleSpark reserves the right to terminate any Agreement at any time without notice, refund, or compensation in the event that the Client does anything that in AbleSpark's sole discretion violates any of these Terms of Service; acts in an unprofessional or abusive manner towards any of AbleSpark's employees, contractors, or affiliates; damages AbleSpark's good name or standing in the community; damages the good name or standing in the community of any of AbleSpark's affiliates, subsidiaries, or partners; uses any service provided by AbleSpark for pornography, sex-related merchandising, promoting illegal activity, promoting content that may be considered detrimental to the public health, safety, or welfare; or interfering with other Clients' use and enjoyment of any service provided by AbleSpark. Clients that violate any of these conditions will be subject to a \$250 per hour charge for administration and investigation costs.

27. CHOICE OF LAW

All Agreements between AbleSpark and the Client shall be treated as though they were executed and performed in Anne Arundel County, Maryland, and shall be governed by and construed in accordance with the laws of the United States of America and of the State of Maryland, without regard to conflict of law principles. The language in these Terms of Service shall be interpreted as to its fair meaning and not strictly for or against any party. All legal proceedings arising in any way out of any Assignment shall be brought solely in a court of competent jurisdiction in Anne Arundel County, Maryland. The Client expressly submits to the jurisdiction of said courts; and the Client consents to extra-territorial service of process.

28. CREDIT LINES

Unless otherwise agreed to in writing, AbleSpark shall be given credit on all documentation, packaging, artwork, media, websites, and applications arising from this agreement. Credit lines may include a hyperlink to AbleSpark's website.

29. NO WAIVER

Any failure or refusal of AbleSpark to exercise any right or form of relief described herein against any Client shall not constitute a waiver of the right to exercise such rights or relief in the future.