

# Hawaiian Telcom Terms of Service & Acceptable Use Policy

**Hawaiian Telcom Terms Of Service  
And Acceptable Use Policy**

**WELCOME TO HAWAIIAN TELCOM**

**THESE TERMS AND CONDITIONS CONTAIN IMPORTANT REQUIREMENTS REGARDING YOUR USE OF HAWAIIAN TELCOM'S DIALUP AND HIGH SPEED INTERNET ACCESS SERVICE AND YOUR RELATIONSHIP WITH HAWAIIAN TELCOM AND ITS THIRD PARTY SUPPLIERS.**

**READ THEM CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR RIGHTS AS WELL AS THOSE OF HAWAIIAN TELCOM.**

**IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT USE THE SERVICE AND YOU MUST TERMINATE YOUR SERVICE IMMEDIATELY.**

1. These Terms of Service (the "Agreement") are entered into by and between the subscriber ("you", "your", or "Subscriber") and Hawaiian Telcom Services Company, Inc. or its affiliate providers of this Agreement ("Hawaiian Telcom", "us" or "we"). The Agreement includes any Service Quotation(s) ("Quotation") provided to you. The Agreement sets forth the terms and conditions under which you agree to use the Service, and under which Hawaiian Telcom agrees to provide the Service to you.

**Acceptance of this Agreement.**

You are deemed to have accepted this Agreement upon the earlier of: (a) your submission of an online order; (b) your accepting the Terms of Service electronically during registration or in the course of installing the Software or the Equipment; (c) your use of the Service; or (d) your retention of the Software or Equipment we provide beyond 30 days following delivery. This Agreement is made up of the terms below including all Acceptable Use policies. The Agreement and related policies are also set forth on the Hawaiian Telcom Website located at [hawaiiantel.com/internetsupport](http://hawaiiantel.com/internetsupport). You may also receive a hard copy of this Agreement by writing to us at:

ATTN: Terms of Service Hardcopy Request  
Marketing Department  
Hawaiian Telcom Services Company, Inc.  
PO Box 2200  
Honolulu, HI 96841

**2. DEFINITION OF SERVICE.**

For purposes of this Agreement, the term "Service" shall mean the Hawaiian Telcom Dialup and High-Speed Internet Access service and any related transport services provided to you by Hawaiian Telcom. This includes , including all software, equipment, technical support, portal, Domain Name Service (DNS), Website hosting, email and other features, products and services provided by Hawaiian Telcom under the pricing plan applicable to your Service. The Service does not include voice telephony services over the public switched telephone network. For purposes of this Agreement, "Equipment" shall mean the modem, router and/or other equipment provided by Hawaiian Telcom for use with your Service.

The Service may be referred to as::

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High-Speed Internet Lite  
High-Speed Internet Basic  
High-Speed Internet Advantage  
High-Speed Internet Premium  
High-Speed Internet Extreme  
High-Speed Internet Ultimate  
High-Speed Internet Elite  
Business High-Speed Internet Lite  
Business High-Speed Internet Basic  
Business High-Speed Internet Advantage  
Business High-Speed Internet Premium  
Business High-Speed Internet Extreme  
Business High-Speed Internet Ultimate  
Business High-Speed Internet Elite  
Hawaiian Telcom Dial-up Service

The Service shall also include any software or hardware that we provide you in connection with the Service to which you have subscribed.

### **Changes to Service.**

We reserve the right to change any of the features, content or applications offered as part of the Service at any time. Please visit the Hawaiian Telcom website [hawaiiantel.com/internetsupport](http://hawaiiantel.com/internetsupport) for changes to this Terms of Service Agreement.

### **3. AUTHORIZED USER, USE, AND RESPONSIBILITIES.**

You acknowledge that you are 18 years of age or older, and you agree that you have the legal authority to enter into this agreement and affirm that the information you supply to us is correct and complete. You further acknowledge and agree that you are solely responsible for all use of the Service and the manner in which the Service is used, including without limitation the protection, storage, back-up and security of your data, software, computer network and other facilities; your choice of equipment, software (including all upgrades thereto) and online content; and all other matters related to how you access and use the Service. You understand that Hawaiian Telcom relies on the information you supply and that providing false or incorrect information may result in Service provisioning or delivery delays or the suspension or termination of your Service. You agree to promptly notify Hawaiian Telcom whenever you're personal or billing information changes (including for example, your name, address, telephone number, and credit card number and expiration date).

We will provide you with or, if available in your area for your chosen Service, you will choose, a User ID and/or Hawaiian Telcom User Name (collectively, "User ID") and password for each account purchased to enable you to access the Service. You agree to protect your User ID and to pay for all activity associated with it.

You agree that you are responsible for all use on your account, including any secondary accounts or sub-accounts registered to your primary account. You understand this means that you accept full liability and responsibility for the actions of anyone who uses the Service via your account, or any

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secondary accounts, with or without your permission. You also agree to use the Dialup Service only in states and countries defined in paragraph 4 below.

If you select a pricing plan that includes a predetermined allocation of Services (for example, 150 hours of Dialup Service), unused allotment of Services from one billing cycle will not carry over to any other billing cycle. For all usage based pricing, you agree to pay usage fees as outlined by the dialup usage pricing included in your registration and/or setup software

### **4. DIALUP ACCESS & HIGH SPEED INTERNET SERVICES.**

#### **If you subscribe to Dialup access & global service provider services:**

You agree to comply with the terms of the Hawaiian Telcom's Dialup Access policies as found in this paragraph. For all dialup services that are priced on usage basis, you agree to pay the per usage fee as outlined in your pricing agreement at time of signup for the Service.

You may not resell the Dialup Service, use it for high volume purposes, or engage in similar activities that constitute such use (commercial or non-commercial), or use it as a dedicated line, as determined solely by Hawaiian Telcom. If your account is idle for fifteen minutes, it will be subject to log-off automatically and without notice. An account session may be deemed to be idle if there appears to be no interactive, human generated data received from the remote user's computer system within a prescribed amount of time. Automated data is not considered interactive or human generated. Automated data includes but is not limited to data generated by an automatic re-dialer, script or other program that runs on a computer system for the purpose of avoiding inactivity disconnects, and the automated checking of email or "pinging" the host to maintain a constant connection.

You may only use your account for one log-on session per connection type at a time. You may not use more than one IP address for each log-on session.

You may not use the Dialup Service to host any type of server whether personal or commercial in nature.

Hawaiian Telcom provides Dialup Service in the 48 contiguous United States, Hawaii, Guam and Puerto Rico. Hawaiian Telcom reserves the right to change the geographical locations supported for Dialup Service customers.

#### **If you subscribe to High-Speed Internet Service:**

You may not resell the High-Speed Internet Service, use it for high volume purposes, or engage in similar activities that constitute resale (commercial or non-commercial), as determined solely by Hawaiian Telcom.

You may connect multiple computers/devices within a single home or office location to your High-Speed Internet Service or High-Speed Internet modem and/or router to access the Service, but only through a single High-Speed Internet account and a single IP address obtained from Hawaiian Telcom.

Where available, High-Speed Internet customers may use their Internet accounts to connect through an analog connection, but these connections will be subject to usage thresholds and additional per

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hour and monthly charges, depending on the Service to which you subscribed.

Additional User IDs provided for High-Speed Internet customers email boxes are not intended for use as Dialup connections. Any usage associated with additional email box User IDs will be charged the per hour rate associated with usage above the monthly allotment for analog Dialup Service (where available). The number of mailboxes available to you depends upon the Service to which you have subscribed.

You may not use the High-Speed Internet Service to host any type of server whether personal or commercial in nature.

Hawaiian Telcom reserves the right to audit connections electronically to enforce these or any other provisions of the Agreement.

### **5. ACCEPTABLE USE POLICY.**

You agree to comply with the terms of the Acceptable Use Policy, which is attached hereto as Appendix A and which also may be found posted on the Website at **[hawaiiantel.com/internetsupport](http://hawaiiantel.com/internetsupport)**.

### **6. REVISIONS.**

We may revise the terms and conditions of this Agreement from time to time (including any of the policies which may be applicable to usage of the Service) by posting such revisions at the Website at **[hawaiiantel.com/internetsupport](http://hawaiiantel.com/internetsupport)**. You agree to visit these pages periodically to be aware of and review any such revisions. Increases to the monthly price of the Service shall be effective thirty (30) days after posting; revisions to any other terms and conditions shall be effective upon posting. By continuing to use the Service after revisions are in effect, you accept and agree to the revisions and to abide by them. If you do not agree to the revision(s), you must terminate your Service immediately.

### **7. CIVIL SUBPOENA REQUEST POLICY.**

You agree to comply with the terms of the Civil Subpoena Request Policy, which may be found posted on the Website at **[hawaiiantel.com/internetsupport](http://hawaiiantel.com/internetsupport)**. If you have any questions or concerns about our civil subpoena policies send a letter via US mail at the following address:

Custodian of Records  
Attn: Legal Compliance  
Hawaiian Telcom Services Company, Inc.  
P.O. Box 2200  
Honolulu, HI 96841

**General.** Hawaiian Telcom Internet's Civil Subpoena Policy provides that we will not release account information or information sufficient to identify a subscriber except under certain specific circumstances.

Our Privacy Policy states:

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"Hawaiian Telcom does not sell or disclose individually-identifiable information obtained online, or information about you or your account or service, to anyone outside of Hawaiian Telcom Services Company, Inc. or its authorized vendors, contractors, affiliates and agents unless you specifically authorize it, disclosure is required or permitted by law, required by court order, warrant or subpoena; requested by government officials with reasonable grounds to believe that the information is a communication of a computer trespasser; or deemed necessary by Hawaiian Telcom in its sole discretion to protect the safety, rights or property of Hawaiian Telcom or any other person or entity."

If you seek the identity of or account information about a Hawaiian Telcom High-Speed Internet subscriber in connection with a civil legal matter, you must serve Hawaiian Telcom Services Company, Inc. with a valid subpoena at the address below and agree to compensate Hawaiian Telcom High-Speed Internet for our subpoena response services according to the terms of this policy.

### **Service of Subpoenas.**

All civil subpoenas should be directed to the custodian of record listed below.

Custodian of Records  
Attn: Legal Compliance 1st Floor  
Hawaiian Telcom Services Company, Inc.  
1177 Bishop Street  
Honolulu, HI 96813

### **Notice to Subscribers and Response Time.**

Upon receipt of a valid subpoena, it is Hawaiian Telcom Internet's policy to notify the subscriber whose information is sought via email or U.S. mail. In non-emergency circumstances, Hawaiian Telcom will generally not produce the subpoenaed subscriber's identity information until approximately two weeks after receipt of the subpoena, unless legally required to do so.

### **Fees for Subpoena Compliance.**

Hawaiian Telcom Services Company, Inc. charges the following rates for compliance with High-Speed Internet & Dialup Service civil subpoenas. We will invoice the person or entity submitting the subpoena following receipt and the subpoena proponent must make payment within 30 days from the date of receipt of our invoice. Checks should be made out to the legal entity to which the subpoena was directed (see Service of Subpoenas, above).

Hawaiian Telcom Services Company, Inc.'s High-Speed Internet & Dialup Service civil subpoena compliance fees and charges are as follows:

Research - \$75.00/hour  
Courier Service - Cost as Billed  
Copies - \$.10/page

These are minimum fees and Hawaiian Telcom reserves the right to change these fees at its discretion as well as charge additional fees or services provided.

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### **Policies Regarding Email.**

Hawaiian Telcom Internet is subject to the provisions of the Electronic Communications Privacy Act, 18 U.S.C. 2701 et seq, which prohibits an electronic communications service provider from producing the contents of electronic communications, even pursuant to subpoena or court order, except in limited circumstances. Furthermore, Hawaiian Telcom's email servers retain email for a period of only approximately 30 days after the email has been read and left on our servers. After that time, the email may be automatically deleted. Unread and sent email is preserved on our system for approximately 30 days. If a subscriber deletes any email, that email is automatically deleted hourly from the Hawaiian Telcom email system. In addition, Hawaiian Telcom Internet subscribers may, at their election, download email to their computer. Such email is not preserved on Hawaiian Telcom's email system.

Hawaiian Telcom Internet reserves the right to request a copy of the complaint and any supporting documentation to indicate how Hawaiian Telcom Internet's email address is related to the pending litigation which underlies a subpoena.

### **8. SECURITY**

You are responsible for development and maintenance of any security procedures you deem appropriate, such as logon security and encryption of data, User ID, alias, and password on your modem and/or router and firewalls, to protect your information. We are not responsible in the event that any party changes the information on your account, including without limitation, your alias, User ID, password, or security information. We are not responsible for backup and restoration of your information. We strongly recommend the use and appropriate updating of commercial anti-virus, firewall, and other internet security software. Additionally, please visit the Hawaiian Telcom Customer Security Guidelines page as located at [hawaiiantel.com/security](http://hawaiiantel.com/security) for information on ways to further secure yourself from known security risks. Hawaiian Telcom provides one free McAfee Security license per High Speed Internet account. Additional licenses can be purchased at [hawaiiantel.com/security](http://hawaiiantel.com/security).

### **9. AVAILABILITY OF SERVICE**

The Service you select may not be available in all areas, may not be available at the rates, speeds, or bandwidth generally marketed, and some telephone lines may not qualify for the Service even if initial testing showed that your line was qualified. For High-Speed Internet Access Subscribers, we will provision your qualified line for DSL at the maximum line rate available to your location based on our standard line qualification procedures, unless you have selected a level of service with a lower maximum line rate. All Services are provided on an AS IS basis and through put speeds, line rate access to Usenet newsgroups and availability of your Service are not guaranteed.

Hawaiian Telcom or its suppliers may, at any time, without notice or liability, restrict the use of the Service or limit its time of availability in order to perform maintenance activities and to maintain session control.

### **10. SOFTWARE LICENSES AND THIRD PARTY SERVICES.**

In connection with our provision of the Service, we may provide to you, via download, Website Access, CD, other media, or other delivery method, the use of certain software which are owned by Hawaiian

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Telcom and/or its third party licensors, providers and suppliers, and which may be provided free or for a fee, including Website services, client and/or virus protection software ("Software"). We reserve the right to update, upgrade or change the Software and related settings on your computer and software necessary for such update, upgrade, or change from time to time, and you agree to cooperate in performing such steps as may be necessary to install any updates or upgrades to the Software. You may use the Software in object code form only, on the hardware on which it is installed, only as part of or for use with the Service and for no other purpose.

The Software or website services may be accompanied by an end user license agreement from Hawaiian Telcom or a third party. Your use of the Software is governed by the terms of that license agreement and by this Agreement, where applicable. You may not install or use any Software that is accompanied by or includes an end user license agreement unless you have first agreed to the terms and conditions of the end user license agreement.

With regard to any Software which is not accompanied by an end user license agreement, you are hereby granted a revocable, non-exclusive, non-transferable license by Hawaiian Telcom or its third party licensors, providers or suppliers, to use the Software (and any corrections, updates and upgrades). You may not make any copies of the Software. You agree that the Software is the confidential information of Hawaiian Telcom or its third party licensors, providers or suppliers, which you shall not disclose to others or use except as expressly permitted herein. The Software contains copyrighted material, trade secrets, patents, and proprietary information owned by Hawaiian Telcom or its third party licensors, providers, or suppliers. You may not de-compile, reverse engineer, disassemble, attempt to discover any source code or underlying ideas or algorithms of the Software, otherwise reduce the Software to a human readable form, modify, rent, lease, loan, use for timesharing or service bureau purposes, reproduce, sublicense or distribute copies of the Software, or otherwise transfer the Software to any third party. You may not remove or alter any trademark, trade name, copyright or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Software. You are not granted any title or rights of ownership in the Software. You acknowledge that this license is not a sale of intellectual property and that Hawaiian Telcom or its third party licensors, providers or suppliers continue to own all right, title and interest, including but not limited to all copyright, patent, trademark, trade secret, and moral rights, to the Software and related documentation, as well as any corrections, updates and upgrades. . Hawaiian Telcom reserves the right to update or change the Software from time to time and you agree to cooperate in performing such steps as may be necessary to install any updates or upgrades to the Software. The Software may be used in the United States only, and any export of the Software is strictly prohibited.

We may provide technical assistance and support for the Software in accordance with our policies. Unless otherwise provided in such policies, Hawaiian Telcom does not provide technical assistance or support for any third party Software. Technical assistance or support with regard to third party software provided by the Software supplier is solely provided in accordance with such third party's policies or other terms of service.

Your license to use the Software shall remain in full force and effect unless and until terminated by Hawaiian Telcom , its third party licensors, providers or suppliers, or until your Service is terminated. Upon termination of your Service for any reason, you must cease all use of the Software and immediately delete the Software from your computer.

### **Other Third Party Agreements.**



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If you subscribe to or otherwise use any third party services offered by or through Hawaiian Telcom, your use of any such services is subject to the terms of services of such third party service provider. You agree to comply with such provider's terms of service and that the third party provider is solely responsible for delivery of its service(s) to you and your use of them. Third party services include, but are not limited to, portal, music, email, web hosting, domain name hosting, dialup access, newsgroup access, blogware, gaming, storage and photography services that Hawaiian Telcom may elect to make available from time to time. Violation of such third party provider's terms of service may, in Hawaiian Telcom's sole discretion, result in the termination of your Service. If there is a conflict between the terms of this Agreement, including all Hawaiian Telcom policies reference herein, and the terms of service of such a third party provider then the more restrictive or stringent terms will be enforced

**If at any time during the term of this agreement Hawaiian Telcom provides you with free or for-fee software, hosted software, web hosting services or equipment, including without limitation, client and/or network security software, you agree that your sole right to recourse, if any, including but not limited to damages for failure of such software to perform is against the manufacturer of such software or peripheral equipment.**

Hawaii Telcom reserves the right to change third party vendors and will update the Terms of Service agreement as listed at this website [hawaiiantel.com/internetsupport](http://hawaiiantel.com/internetsupport) with a notation to the customer as to the updated third party vendor terms of service.

### **11. WEBSITE USE, CONTENT & DIGITAL MULTIMEDIA.**

#### **Scope of Hawaiian Telcom Website.**

Hawaiian Telcom makes part of the [www.hawaiiantel.net](http://www.hawaiiantel.net) and [www.hawaiiantel.com](http://www.hawaiiantel.com) Websites available to users at no charge. The features of the Hawaiian Telcom Website may include but are not limited to, access to email services, search capabilities, account management tools, connections to certain content (news, weather and sports, for example), MP3 & Digital Multimedia content, diagnostic tools for troubleshooting and games. The Hawaiian Telcom Websites are intended solely for your private and personal use on your computer. Any other use or any attempt to use the Hawaiian Telcom Website for commercial or other purposes is strictly prohibited.

#### **Right To Change, Modify or Terminate Website.**

Without prejudice to any other rights that Hawaiian Telcom may have, Hawaiian Telcom reserves the right and sole discretion to change, limit, terminate, modify at any time, temporarily or permanently cease to provide the Hawaiian Telcom Websites or any part thereof to any user or group of users, without prior notice and for any reason or no reason. In the event you or Hawaiian Telcom terminates this Agreement, you must immediately stop using the Hawaiian Telcom Websites.

#### **Intellectual Property Rights.**

All title and intellectual property rights (including without limitation, copyrights, patents, trademarks and trade secrets) in and to the Hawaiian Telcom Websites (including but not limited to, related software and including but not limited to any images, photographs, animations, video, audio, music, text and

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"applets," incorporated into the software, and any copies of the software), are owned by Hawaiian Telcom, its affiliates or suppliers. All title and intellectual property rights in and to the information and content which may be accessed through use of the Hawaiian Telcom Websites are the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This Agreement does not grant you any rights to use such content, nor does it grant any rights to the Hawaiian Telcom Websites other than the right to use the Hawaiian Telcom Websites according to the terms of the Agreement.

### **13. TERM AND TERMINATION**

#### **Effective Date and Term.**

This Agreement goes into effect upon your acceptance of this Agreement as set forth in Paragraph 1 and shall continue, subject to the terms of this Paragraph and of any Term agreement you may have with us, until terminated by either party as permitted by this Agreement. We reserve the right to terminate the Service (or any part thereof) in the event Hawaiian Telcom ceases to offer the Service. Billing for your Dialup Service will automatically begin upon registration of your service. Billing for your High-Speed Internet Service will automatically begin on the date provisioning of your High-Speed Internet is complete and ready for use ("Service Ready Date").

After the end of any Term agreement with us, you may be given the option to enter into a new annual contract for a new one-year term subject to the terms and conditions for the annual plan, if any, in effect at that time. If you do not elect to enter into a new annual plan, your Service will automatically convert to a month-to-month plan at the then-effective monthly fee.

If you have a twelve (12) month Service commitment and change Service plans, the balance of your annual term commitment will apply to your new Service plan.

#### **High-Speed Internet Service Money Back Guarantee.**

Hawaiian Telcom provides thirty (30) day money back guarantee as follows:

For High-Speed Internet Service, your thirty (30) day money-back guarantee begins upon your Service Ready Date. During this thirty (30) day period you may cancel the High-Speed Internet Service and receive a full refund of all monthly charges paid as well as any one-time charges and equipment charges paid to Hawaiian Telcom (provided you return all Equipment in good working condition.) If you cancel your High-Speed Internet Service prior to your Service Ready Date or within the thirty (30) day money-back guarantee period, you will be required to return to Hawaiian Telcom any Equipment provided to you by Hawaiian Telcom; Hawaiian Telcom will provide you with a pre-paid mailing label and instructions for the return of your Equipment. In the event you fail to return the Equipment, an additional charge for the unreturned Equipment will apply. Early termination fees shall not apply to High-Speed Internet Service terminated within the thirty (30) day money-back guarantee period. The thirty (30) day money-back guarantee does not apply to customers who change between monthly, annual, bundle or other pricing plans. The money-back guarantee is limited to one per Subscriber per Service type per Service address.

#### **Termination of Service**

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### **High-Speed Internet or Dialup Subscribers with Month-to-Month Accounts.**

If you are a month-to-month High-Speed Internet Service or Dial-up Service customer, either you or Hawaiian Telcom may terminate this Agreement without cause by giving notice to the other in accordance with the notice provision set forth at Paragraph 21 below. Termination by you will be effective upon your compliance with Paragraph 14, below. Activation or set-up fees paid at the initiation of your High-Speed Internet Service, if any, are not refundable, except during the thirty (30) day money-back guarantee period. Additionally, if your Service is terminated for any reason prior to the end of the first year of service and you received Equipment at no charge from Hawaiian Telcom, you will be required to return the Equipment to Hawaiian Telcom; failure to do so will result in an additional equipment charge. We will provide you with a pre-paid mailing label and instructions for the return of your Equipment. Termination by Hawaiian Telcom shall be effective thirty (30) days after the date of notice to you, except as otherwise provided in this Agreement. In the event of termination by Hawaiian Telcom, for any reason, you will be required to pay the remaining balance of the charges applicable to your Service through the effective date of termination.

### **High-Speed Internet Subscribers with Annual Service Contracts; Termination Fee.**

The term for High-Speed Internet Service customers with an annual service commitment is for twelve (12) consecutive months beginning on: (a) the date you change your existing High-Speed Internet Service plan to an annual Service contract; or (b) the Service Ready Date, whichever is later, and continuing thereafter on a month-to-month basis until terminated by either party as permitted by this Agreement. IN THE EVENT THAT YOU TERMINATE YOUR HIGH SPEED INTERNET SERVICE BEFORE COMPLETING TWELVE (12) MONTHS OF SERVICE UNDER YOUR ANNUAL PLAN, THEN YOU AGREE TO PAY HAWAIIAN TELCOM UPON DISCONTINUANCE OF THE SERVICE A TERMINATION FEE IN THE AMOUNT AS SET FORTH IN THE PRICING PLAN YOU HAVE CHOSEN (THE "EARLY TERMINATION FEE"). In addition to any applicable Early Termination Fees, you will be required to pay the remaining balance of the charges applicable to your Service through the effective date of termination. If you terminate Service at your location, your existing annual plan cannot be carried over to a new Service location.

### **Termination and/or Suspension by Hawaiian Telcom.**

If, in the sole discretion of Hawaiian Telcom: (a) you are in breach of any of the terms of this Agreement, including but not limited to all policies regarding abuse and acceptable use of the service as outlined in Appendix A; (b) your use of the Service is prohibited by law or is disruptive to, adversely impacts or causes a malfunction to the Service, Hawaiian Telcom's network, or the use and enjoyment of other users; (c) Hawaiian Telcom receives an order from a court to terminate your service; (d) Hawaiian Telcom for any reason ceases to offer a Service entirely or in a particular geographic area or specific location; or (e) you are no longer a Hawaiian Telcom local telephone subscriber as set for in Paragraph 10.3, then Hawaiian Telcom at its sole election may terminate or suspend your Service or part of your Service immediately without notice. For termination in accordance with this Paragraph 14, you shall be liable for the applicable fees and/or Equipment charges set forth in Paragraph 14, (depending on which fees or charges are applicable) and you shall also be responsible for returning to Hawaiian Telcom all hardware (other than hardware you have purchased from Hawaii Telcom) which Hawaiian Telcom has provided to you in connection with the Service, and to cease use of all the provided Software and immediately delete such Software from your computer. In the event such hardware is not returned to us within 45 days after Hawaiian Telcom terminates your service under this

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paragraph, Hawaiian Telcom shall charge, and you agree to pay, the un-depreciated list price of the unreturned hardware.

### **Terminated Account.**

Hawaiian Telcom, in its sole discretion, may refuse to accept your application for Service following a termination or suspension of your use of the Service. If your Service is terminated for any reason, you agree to pay a reconnection fee if the Service is reactivated.

### **Regulatory Compliance.**

In the event there is a ruling, regulation, or order issued by a judicial, legislative or regulatory body that causes Hawaiian Telcom to believe that this Agreement may be in conflict with such rules, regulations, and orders, Hawaiian Telcom may terminate or modify your Service and/or this Agreement immediately without notice.

### **Deletion of Data upon Termination.**

You agree that if your Service is terminated for any reason, Hawaiian Telcom has the right to immediately delete all data, files, and other information stored in or for your account without further notice to you.

### **IP Addresses and Domain Name Registration (for business customers).**

Upon expiration, cancellation or termination of the Agreement or an applicable Quotation, you agree to return to Hawaiian Telcom, as applicable, any IP addresses or address blocks assigned to you by either or both of us. If we deem it necessary, you may be required to renumber the IP addresses assigned to you by either or both of us. Where applicable, all fees associated with domain name registration and periodic maintenance of domain names are your responsibility. The registrar or, either of us, on the registrar's behalf, will bill such fees directly to you. Such fees are not included in the price of the Service. You agree to abide by the domain name registrar's terms and conditions provided to you prior to obtaining domain name service from us. Domain name registration is limited to the following extensions: .net, .com, and .org. Hawaiian Telcom does not guarantee that your choice of names is or will continue to be available for use as a domain name.

### **Return of Equipment and Software.**

In conjunction with any request from you to terminate this Agreement, you agree to return to Hawaiian Telcom all hardware (other than hardware you have purchased from Hawaii Telcom) which Hawaiian Telcom has provided to you in connection with the Service, and to cease use of all the provided Software and immediately delete such Software from your computer. In the event such hardware is not returned to us within 45 days of your request to terminate this Agreement, Hawaiian Telcom reserves the right to charge you, and you agree to pay, the un-depreciated list price of the unreturned hardware.

## **14. PRICING AND PAYMENT**

### **Prices and Fees.**

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Hawaiian Telcom fees and charges for the Service(s) you select are supplied to you during the ordering process unless otherwise provided for in this Agreement. You agree to pay the charges applicable to your selected Service plan. In the event you have a Term agreement with us, the prices are valid for initial Term of Service. For any service offered on a month-to-month basis, Hawaiian Telcom will give you at least thirty (30) calendar day's prior notice of a price change. Thereafter, your continued use of the service constitutes your acceptance of the price change. You also agree to pay all other charges, including but not limited to a) applicable taxes, b) surcharges, c) recovery fees, d) telephone charges, e) activation fees, f) installation fees, g) set-up fees, h) equipment charges, i) termination fees, and j) other nonrecurring charges. The taxes, fees and other charges detailed in this paragraph a)-d) may vary on a monthly basis; any variations will be reflected in your monthly charge. You also agree to pay any additional charges or fees applied to your billing account for any reason, including but not limited to, interest, and charges due to insufficient credit or insufficient funds. Set up fees, activation fees, installation fees, other non-recurring fees, and equipment charges, if applicable, will be included in your first month's bill. Monthly recurring charges will be billed one month in advance; usage charges will be billed in arrears, if applicable. Hawaiian Telcom or its agent will bill you directly, or bill your credit card or your local Hawaiian Telcom telephone bill (telephone billing available in selected areas only), as you request and as approved by Hawaiian Telcom. Hawaiian Telcom does not accept debit cards for payment of any charges or fees, unless the debit card has a Visa™ or MasterCard™ logo. IF YOU ELECT TO BE BILLED ON YOUR HAWAIIAN TELCOM TELEPHONE BILL, BY USING THE SERVICES YOU AGREE TO HAVE HAWAIIAN TELCOM HIGH SPEED INTERNET CHARGES INCLUDED ON YOUR TELEPHONE BILL.

### **Effect of Changes to Your Service plan.**

Changes to your Service plan, including those described in Paragraph 10.3, will be effective immediately and may result in a higher monthly fee which will apply to your new Service arrangement.

### **Usage Based Pricing**

Hawaiian Telcom may from time to time charge usage based pricing for any of the following services including but not limited to: High-Speed Internet Access, Dialup, Website Hosting, DNS Domain Name Service, Dialup Access, Dedicated Internet Access (DIA), Email, Web Mail, Content & Digital Media Downloads, and other Internet Based Services. If usage based pricing is part of the customer's agreed upon pricing model, customer agrees to pay a per use fee for any of the items listed below that pertain to customer's pricing agreement. Reasons for charging on a usage basis may include:

- When customer exceeds storage quotas
- When customer exceeds email message quotas
- When customer exceeds hourly quotas
- When customer performs dialup services that are charged at a per hour or per use basis. This is especially common when Hawaiian Telcom customers roam outside the normal Hawaiian Telcom network area.
- When Hawaiian Telcom is using third party providers for software and/or services, the usage based pricing of the third party provider will be charged to the customer and provided in the customer's bill.

## **Hawaiian Telcom Terms Of Service And Acceptable Use Policy**

### **Discontinuation of Service for Nonpayment.**

Service to you may be denied or discontinued without notice at any time in the event the placement of Service charges on your telephone bill is refused for any reason, or your credit card provider denies or discontinues providing credit to you for any reason, or you fail to make payments when due or provide us with a new credit card expiration date before the existing one expires.

### **Late Fees.**

If any portion of your bill is not paid by the due date, Hawaiian Telcom may charge you a late fee on unpaid balances and may also terminate or suspend your Service without notice. If your charges are billed by your Hawaiian Telcom local carrier, the Late Fee will be equal to the late payment charge that the local exchange carrier applies. If your charges are not billed by your Hawaiian Telcom local carrier, the late fee will be the lesser of one and one-half percent (1.5 %) per month, or the highest rate permitted by law. In the event Hawaiian Telcom utilizes a collection agency or resorts to legal action to recover monies due, you agree to reimburse us for all expenses incurred to recover such monies, including attorneys' fees.

### **Payment.**

Hawaiian Telcom will invoice you monthly. Payment to Hawaiian Telcom is due upon receipt of invoice and shall be made in U.S. currency. A payment received thirty (30) calendar days or more after the invoice date is considered past due. For past due invoices, you agree to pay interest of 1.5% for each month or part of a month (or the maximum interest allowed by law, whichever is less). Hawaiian Telcom may assign unpaid delinquent charges to a collection agency for action. If Hawaiian Telcom uses legal action to recover monies due, you agree to reimburse Hawaiian Telcom for all expenses incurred to recover such monies (including attorney's fees). You also authorize Hawaiian Telcom to conduct a credit search which we may use to determine your credit worthiness. Hawaiian Telcom may cancel our order or terminate this Agreement if, in its sole opinion, the results of such credit search are deemed unacceptable.

## **15. MANAGEMENT OF YOUR DATA AND COMPUTER.**

### **System Management and Service Performance.**

You are solely responsible for obtaining, installing, configuring, and maintaining suitable equipment and software, including any necessary system or software upgrades, patches or other fixes, which are or may become necessary to access the Service and to operate your computer. You understand that bandwidth is provided on a per-line basis, and that the speed and bandwidth available to each computer or device connected to the network will vary depending upon the number, types and configuration of computers or devices using the Service and the type of use (e.g., streaming media or downloading larger files, etc.), network or Internet congestion, and/or the condition of your telephone line and the wiring inside your location, among other factors.

### **Data Management and Responsibility.**

## **Hawaiian Telcom Terms Of Service And Acceptable Use Policy**

You are responsible for management of your information, including but not limited to back-up and restoration of data (for example, address book and calendaring information), erasing data from disk space you control and changing data on or settings for your modem and/or router. Hawaiian Telcom is not responsible for the loss of your data or for the back-up or restoration of your data regardless of whether this data is maintained on our servers or your computer or server.

### **Hawaiian Telcom Network.**

For the purposes of backup and maintenance, we may use, copy, display, store, transmit, translate, rearrange, reformat, view and distribute your information to multiple Hawaiian Telcom or third party hosting servers. We do not guarantee that these procedures will prevent the loss of, alteration of, or the improper access to, your information.

### **Monitor of Network Performance.**

Hawaiian Telcom may measure and monitor network performance and the performance of your Internet connection and our network as part of this process. We also may access and record information about your computer's profile and settings and the installation of software we provide in order to provide customized technical support and you agree to permit us to access and record such data for the purposes described in this Agreement. We do not share information collected for the purpose of network or computer performance monitoring or for providing customized technical support outside of Hawaiian Telcom or its authorized vendors, contractors and agents. You hereby consent to Hawaiian Telcom's monitoring of your Internet connection and network performance, and the access to and adjustment of your computer settings, as they relate to the Service, Software, or other services which we may offer from time to time.

## **16. LIMITATIONS ON USE OF THE SERVICE.**

You agree that the Internet is not owned, operated or managed by, or in any way affiliated with Hawaiian Telcom and Hawaiian Telcom is not responsible and has no control over the information or materials accessible via the Internet through use of the Service. You further agree that Hawaiian Telcom does not own or control all of the various facilities and communications lines through which access may be provided, nor does Hawaiian Telcom guarantee access to or through Websites, servers or other facilities on the Internet, whether or not such facilities are owned or controlled by Hawaiian Telcom. Hawaiian Telcom cannot and does not guarantee that the Service will provide Internet access that meets your needs. You further agree that the reliability, availability and performance of data or services accessed through the Internet or other services connected or linked to the Service are beyond our control and are not in any way warranted or supported by Hawaiian Telcom.

**17. PRIVACY POLICY.** Hawaiian Telcom will treat your personal information in accordance with its current Privacy Policy, subject to change from time to time, and posted on the Website at [hawaiiantel.com/internetsupport](http://hawaiiantel.com/internetsupport). You agree to the terms of the Privacy Policy, which describes Hawaiian Telcom's use and disclosure of information about your account and your use of the Service. Hawaiian Telcom respects your right to privacy. We adhere to a set of privacy principles which form the basis of our privacy policy. When you visit this site you may provide information on two different levels about your visit:

## **Hawaiian Telcom Terms Of Service And Acceptable Use Policy**

- Anonymous statistics collected as you browse the site, and
- Personal information you knowingly give us for ordering service or requesting technical assistance.

### **18. WARRANTIES AND LIMITATION OF LIABILITY.**

YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE SUPPLIED HEREUNDER IS PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND AS OTHERWISE SPECIFICALLY SET FORTH IN ANY MANUFACTURER WARRANTY FOR ANY EQUIPMENT PROVIDED BY HAWAIIAN TELCOM (BUT ONLY IF SUCH WARRANTY IS INCLUDED WITH SUCH EQUIPMENT), HAWAIIAN TELCOM (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, INCLUDING GLOBAL SERVICE PROVIDERS ("GSPs"), DISCLAIM ANY AND ALL WARRANTIES FOR THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, NON-INTERFERENCE, TITLE, COMPATIBILITY OF COMPUTER SYSTEMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING, COURSE OF TRADE, OR ARISING UNDER STATUTE. NO ADVICE OR INFORMATION GIVEN BY HAWAIIAN TELCOM OR ITS REPRESENTATIVES SHALL CREATE A WARRANTY. USE OF HAWAIIAN TELCOM TECHNICAL SUPPORT IS AT YOUR OWN RISK AND IS NOT WARRANTED.

HAWAIIAN TELCOM DOES NOT WARRANT OR GUARANTEE THAT SERVICE CAN BE PROVISIONED TO YOUR LOCATION, OR THAT PROVISIONING WILL OCCUR ACCORDING TO A SPECIFIED SCHEDULE, EVEN IF HAWAIIAN TELCOM HAS ACCEPTED YOUR ORDER FOR HIGH SPEED INTERNET SERVICE. THE PROVISIONING AND PERFORMANCE (SPEED) OF YOUR HIGH SPEED INTERNET SERVICE IS SUBJECT TO NETWORK AVAILABILITY, CIRCUIT AVAILABILITY AND OTHER FACTORS, INCLUDING WITHOUT LIMITATION, LOOP LENGTH, THE CONDITION OF YOUR TELEPHONE LINE AND WIRING INSIDE YOUR LOCATION, AND COMPUTER/DEVICE CONFIGURATION AND CAPABILITIES AND NETWORK/INTERNET CONGESTION, AMONG OTHER FACTORS. IN THE EVENT YOUR LINE IS NOT PROVISIONED FOR ANY REASON, NEITHER YOU NOR HAWAIIAN TELCOM SHALL HAVE ANY DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT (OTHER THAN YOUR OBLIGATION TO RETURN ANY HAWAIIAN TELCOM- PROVIDED EQUIPMENT, PURSUANT TO PARAGRAPH 14 ABOVE).

HAWAIIAN TELCOM DOES NOT WARRANT THAT THE SERVICE OR EQUIPMENT PROVIDED BY HAWAIIAN TELCOM WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES, WORMS, OR THE LIKE. HAWAIIAN TELCOM SHALL NOT BE LIABLE FOR LOSS OF YOUR DATA, OR IF CHANGES IN OPERATION, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF YOUR EQUIPMENT, RENDER THE SAME OBSOLETE OR OTHERWISE AFFECT ITS PERFORMANCE. HAWAIIAN TELCOM MAKES NO WARRANTY REGARDING ANY TRANSACTIONS EXECUTED USING THE SERVICE OR THE INTERNET. HAWAIIAN TELCOM MAKES NO WARRANTY REGARDING THE CONTENT AND INFORMATION ACCESSED BY USING THE SERVICE OR ANY LINKS DISPLAYED. YOU EXPRESSLY ASSUME ALL RISK AND RESPONSIBILITY FOR USE OF THE SERVICE AND THE INTERNET GENERALLY. DO NOT USE THE SERVICE IN ANY HIGH RISK ACTIVITIES WHERE DAMAGE OR INJURY TO PERSON, PROPERTY, ENVIRONMENT, OR BUSINESS MAY RESULT IF AN ERROR OCCURS.



## **Hawaiian Telcom Terms Of Service And Acceptable Use Policy**

IN NO EVENT SHALL HAWAIIAN TELCOM (OR ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, OR AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS, INCLUDING GSPs, BE LIABLE FOR: (A) ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOSS OF REVENUE OR DAMAGE TO DATA ARISING OUT OF THE USE, PARTIAL USE OR INABILITY TO USE THE SERVICE, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION, THOSE ARISING UNDER CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY, EVEN IF HAWAIIAN TELCOM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES, OR (B) ANY CLAIMS AGAINST YOU BY ANY OTHER PARTY.

ALL LIMITATIONS AND DISCLAIMERS STATED IN THIS PARAGRAPH 19 ALSO APPLY TO HAWAIIAN TELCOM'S THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, INCLUDING GSPs, AS THIRD PARTY BENEFICIARIES OF THIS AGREEMENT.

ANY RIGHTS OR LIMITS STATED HEREIN ARE THE MAXIMUM FOR WHICH HAWAIIAN TELCOM (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES), HAWAIIAN TELCOM'S THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, INCLUDING GSPs, ARE COLLECTIVELY RESPONSIBLE.

THE REMEDIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE YOUR SOLE AND EXCLUSIVE REMEDIES. YOU MAY HAVE ADDITIONAL RIGHTS UNDER CERTAIN LAWS (SUCH AS CONSUMER LAWS), WHICH DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY, OUR EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

HAWAIIAN TELCOM RESERVES THE RIGHT TO PURSUE ANY AND ALL LEGAL AND EQUITABLE CLAIMS AGAINST YOU PERTAINING TO YOUR USE OR MISUSE OF THE SERVICE OR FOR YOUR BREACH OF THE AGREEMENT (INCLUDING ANY POLICIES RELATING TO THE SERVICE.)

### **19. INDEMNIFICATION.**

You agree to defend, indemnify and hold harmless Hawaiian Telcom (and their officers, directors, employees, parents, third party suppliers, subsidiaries, and affiliates) from and against all liabilities, costs and expenses, including reasonable attorney's fees, related to or arising from: (a) any violation of applicable laws, regulations or this Agreement by you (or any parties who use your account, with or without your permission, to access the Service); (b) the use of the Service, Internet, Website use or the placement or transmission of any message, information, software or other materials on the Internet by you (or any parties who use your account, with or without your permission, to access the Service); (c) negligent acts, errors, or omissions by you (or any parties who use your account, with or without your permission, to access the Service); (d) injuries to or death of any person and for damages to or loss of any property, which may in any way arise out of or result from or in connection with this Agreement, except to the extent that such liabilities arise from the active negligence or willful misconduct of the other party; or (e) claims for infringement of any intellectual property rights arising from the use of the Service, software, or the Internet.

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### **20. NOTICES.**

Notices required under this Agreement by you shall be provided to the Customer Service Department in accordance with the methods set forth under the **www.hawaiiantel.com** Website in the Contact Section. Notices by Hawaiian Telcom to you shall be deemed given: (a) when sent to your Hawaiian Telcom email address, or (b) when deposited in the United States mail addressed to you at last-known address or (c) when hand delivered to your home, as applicable. Notice of changes to this Agreement and these Terms of Service will be deemed given upon posting to the pages on the Website located at **hawaiiantel.com/internetsupport** as set forth in Paragraph 6, Revisions, above.

With regard to electronic communications, you and Hawaiian Telcom further agree that: (a) the User ID and/or alias of a sender, contained in an electronic communication ("email"), is legally sufficient to verify the sender's identity and the authenticity of the communication; (b) an email sent containing your User ID and/or alias establishes you as its originator and has the same effect as a document with your written signature on it; and (c) an email or any computer printout of it, is a valid proof of the validity of the original content of the electronic communication.

### **21. GENERAL PROVISIONS**

All obligations of the parties under this Agreement, which, by their nature, would continue beyond the termination, cancellation, or expiration of this Agreement, including by way of illustration and not limitation, those clauses relating to Software Licenses, Warranties and Limitation of Liability, and Indemnification, shall survive such termination, cancellation or expiration.

Hawaiian Telcom will not be liable for delays, damages or failures in performance due to causes beyond its reasonable control, including, but not limited to, acts of a governmental body, acts of God, acts of third parties, fires, floods, strikes or other labor-related disputes, of other things we do not control, or an inability to obtain necessary equipment or services.

You agree not to assign or otherwise transfer, this Agreement in whole or in part, including the Software or your rights or obligations under it. Any attempt to do so shall be void. We may assign all or any part of this Agreement without notice and you agree to make all subsequent payments as directed.

You and Hawaiian Telcom agree that the substantive laws of the State of Hawaii, without reference to its principles of conflicts of laws, will be applied to govern, construe and enforce all of the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement. YOU AND HAWAIIAN TELCOM CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION OF AND VENUE IN A COURT LOCATED IN HONOLULU, HAWAII FOR ANY SUITS OR CAUSES OF ACTION CONNECTED IN ANY WAY, DIRECTLY OR INDIRECTLY, TO THE SUBJECT MATTER OF THIS AGREEMENT OR TO THE SERVICE. Except as otherwise required by law, including Hawaiian laws relating to consumer transactions, any cause of action or claim you may have with respect to the Service must be commenced within one (1) year after the claim or cause of action arises or such claim or cause of action is barred.

Use, duplication or disclosure by any Government entity is subject to restrictions set forth, as applicable, in subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19, FAR 12.212, DFARS 227.7202, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause of DFARS 252.227-7013, and in similar clauses in the NASA FAR

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Supplement. Contractor/manufacture is Hawaiian Telcom or its licensors and suppliers. The use of Software and documentation is further restricted in accordance with the terms of this Agreement.

In the event of a conflict between this Agreement and any applicable tariff, the tariff shall prevail. We reserve the right to modify the Service to reflect any change in any applicable tariff or underlying network service or component affecting the Service.

Hawaiian Telcom's failure at any time to insist upon strict compliance with any of the provisions of this Agreement in any instance shall not be construed to be a waiver of such terms in the future. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the unenforceable portion shall be construed as nearly as possible to reflect the original intentions of the parties.

This Agreement, including all Appendices and all other policies posted on the Website, which are fully incorporated into this Agreement either by attachment or by reference, constitutes the entire agreement between you and Hawaiian Telcom with respect to the subject matter hereto and supersedes any and all prior or contemporaneous agreements whether written or oral. Any changes by you to this Agreement, or any additional or different terms in your purchase orders, acknowledgements or other documents, written or electronic, are void.

Publicity. You shall not use any trademark, trade name, trade dress or any name, picture or logo (the "Marks") which is commonly identified with Hawaiian Telcom or either of our affiliates, or from which any association with Hawaiian Telcom, or either of our affiliates may be inferred or implied, in any manner without the prior written permission of owner of such Marks.

### **APPENDIX A**

#### **Acceptable Use Policy**

This is Hawaiian Telcom's policy on the acceptable use of the Service. It is designed to help protect the Service, Hawaiian Telcom's customers and the Internet community, from irresponsible or illegal activities.

#### **Nature of the Service.**

The Service provided to you is intended for reasonable, periodic, and non-continuous use by a person using a computing device, consistent with the type of use made by a typical individual consumer of our Internet services.

Examples of allowed uses of our Service include web surfing, sending and receiving email, sending and receiving photographs, occasional on-line gaming, and the occasional non-continuous streaming of videos and downloading of files.

Examples of uses of our Service that are not permitted include: the continuous unattended streaming, downloading or uploading of videos or other files; maintaining an unattended or continuous uninterrupted connection to the Internet, such as through a web camera or machine to machine

## **Hawaiian Telcom Terms Of Service And Acceptable Use Policy**

connections that do not involve active participation by a person; or operating an Internet hosting service, such as web hosting or gaming hosting.

However, the immediately preceding restriction against unattended or continuously uninterrupted Internet connections shall not apply to you in the sole event that your service plan description expressly and specifically permits such usage and your service plan rate expressly and specifically contemplates such usage; otherwise, any usage of our Service for an unattended or continuously uninterrupted Internet connection shall be prohibited. You may not use the Service in a manner that impairs the user experience of other users, or that otherwise impairs network performance; these usage restrictions shall apply even if you subscribe to a service plan which does not impose limits on the amount of data you may download or upload during an applicable service period.

If the use of a Site or Resource by you or anyone using your account, in Hawaiian Telcom's sole discretion, violates these Terms or any other Hawaiian Telcom agreement or policy, is objectionable or unlawful, or interferes with, disrupts or degrades the functioning or use of the Internet or the Hawaiian Telcom network by Hawaiian Telcom or other users then, without limiting any other right or remedy Hawaiian Telcom may have, Hawaiian Telcom may suspend, deny or restrict your access to any Site or Resource (and to take any other action Hawaiian Telcom deems appropriate to protect Hawaiian Telcom, our users and other Internet users). Without limiting the general policy stated above, you agree not to use the Sites (including by linking to the Sites), or any Resources, in any manner that:

3. You may NOT use the Service as follows:

- (a) For any unlawful, improper or illegal purpose or activity;
- (b) to post or transmit information or communications that, whether explicitly stated, implied, or suggested through use of symbols, are obscene, indecent, pornographic, sadistic, cruel, or racist in content, or of a sexually explicit or graphic nature; or which espouses, promotes or incites bigotry, hatred or racism; or which might be legally actionable for any reason;
- (c) to access or attempt to access the accounts of others, to spoof or attempt to spoof the URL or DNS or IP addresses of Hawaiian Telcom or any other entity, or to attempt to penetrate or penetrate security measures of Hawaiian Telcom or other entities' systems ("hacking") whether or not the intrusion results in corruption or loss of data;
- (d) to bombard individuals or newsgroups with uninvited communications, data or information, or other similar activities, including but not limited to "spamming", "flaming" or denial or distributed denial of service attacks;
- (e) To transmit unsolicited voluminous emails (for example, spamming) or to intercept, interfere with or redirect email intended for third parties using the Service;
- (f) To introduce viruses, worms, harmful code and/or Trojan horses on the Internet;
- (g) To post information on newsgroups which is not in the topic area or charter (e.g. off- topic posting) of the newsgroup;
- (h) To interfere with another person's usage or enjoyment of the Internet or this Service;
- (i) to post or transmit information or communications that are defamatory, fraudulent, obscene or deceptive, including but not limited to scams such as "make-money-fast" schemes or "pyramid/chain" letters;
- (j) To damage the name or reputation of Hawaiian Telcom, its parent, affiliates and subsidiaries, or any third parties;
- (k) To transmit confidential or proprietary information, except solely at your own risk;

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- (l) To violate Hawaiian Telcom's or any third party's copyright, trademark, proprietary or other intellectual property rights, including trade secret rights;
- (m) To use more than one IP address obtained from Hawaiian Telcom ;
- (n) To generate excessive amounts (as determined by Hawaiian Telcom in its sole discretion) of Internet traffic, or to disrupt net user groups or email use by others;
- (o) to engage in activities designed to or having the effect of degrading or denying Service to Hawaiian Telcom users or others (including activities that compromise a server, router, circuit, software or other Internet component);
- (p) to use any name or mark of Hawaiian Telcom, its parent, affiliates or subsidiaries, as a hypertext link to any Website or in any advertising publicity or other commercial manner;
- (q) To use the Service to operate a server in a manner that interferes with the network or other users' use of the Service;
- (r) to use the Service or the Internet in a manner intended to threaten, harass, or intimidate; (s) to cause the screen to "scroll" faster than other subscribers or users are able to type to it, or any action that has a similar disruptive effect, on or through the Service;
- (t) To use the Service to disrupt the normal flow of online dialogue,
- (u) To use the Service to violate any operating rule, policy or guideline of any other online services provider or interactive service;
- (v) To attempt to subvert or to aid third parties to subvert, the security of any computer facility or system connected to the Internet;
- (w) To impersonate any Hawaiian Telcom employee or official or other person or use a false name while using the Service or implying an association with Hawaiian Telcom;
- (x) to install "auto-responders," "cancel-bots" or similar automated or manual routines which generate excessive amounts of net traffic, or disrupt net user groups or email use by others;
- (y) to make false or unverified complaints against any Hawaiian Telcom subscriber, or otherwise abusing any of Hawaiian Telcom's complaint response procedures;
- z) To use software or any other device that would allow your account to stay logged on while you are not actively using the Service, unless you are a High-Speed Internet customer;
- (aa) To export software or any information in violation of US export laws;
- (bb) to use the Service in contravention of the limitations of the pricing plan you have chosen;
- (cc) for High-Speed Internet customers who use static IP address, to use an IP address other than the one assigned by Hawaiian Telcom;
- (dd) for customer who have been assigned a dynamic IP address to use such IP address to circumvent the changing of IP addresses assigned by the Service or
- (ee) to open connections to more than one Hawaiian Telcom Usenet news service at a time.

#### 4. Copyright Infringement/Repeat Infringer Policy.

Hawaiian Telcom respects the intellectual property rights of third parties, including those granted under the US copyright laws, and the interests of its subscribers and content providers on the Internet. You may not store material of any type or in any format on, or disseminate such material over, Hawaiian Telcom's systems or servers in any manner that constitutes an infringement of third party intellectual property rights, including rights granted under the US copyright laws. In accordance with **the Digital Millennium Copyright Act (DMCA)** and other applicable law, it is the policy of Hawaiian Telcom to terminate, in appropriate circumstances, the Service provided to any subscriber or account holder who is deemed to infringe third party intellectual property rights, including repeat infringers. Appropriate

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circumstances may exist where (i) a Subscriber or account holder has been found by a court of competent jurisdiction to have infringed the copyrights of a third party on two or more occasions, i.e., a repeat infringer, (ii) Subscriber or account holder has entered into an agreement acknowledging wrongdoing to settle a claim of copyright infringement and subsequently uses Hawaiian Telcom's service to violate the terms of that agreement by engaging in copyright infringement or to otherwise engage in conduct that is found by a court of competent jurisdiction to constitute copyright infringement, (iii) where a valid, effective and uncontested notice has been provided to Hawaiian Telcom alleging facts which are a violation by the Subscriber or account holder of Hawaiian Telcom's Copyright Policy prohibiting infringing activity involving Hawaiian Telcom systems or servers, or (iv) in other cases of repeated flagrant abuse of access to the Internet (e.g., willful commercial piracy or malicious attempts to destroy the value of copyrighted works). In addition, Hawaiian Telcom expressly reserves the right to terminate or suspend the Service of any Subscriber or account holder if Hawaiian Telcom, in its sole judgment, believes that circumstances relating to the infringement of third party intellectual property rights warrant such action. These policies are in addition to and do not affect or modify any other rights Hawaiian Telcom may have under law or contract. If you believe that copyrighted material has been used in violation of this policy or otherwise been made available on the Service in a manner that is not authorized by the copyright owner, its agent or the law, please follow the instructions for contacting Hawaiian Telcom's designated Copyright Agent by sending an email to [copyright@hawaiiantel.net](mailto:copyright@hawaiiantel.net) or send a letter via US Mail to the following address:

ATTN: Director of Security  
Hawaiian Telcom Services Company, Inc.  
P.O. Box 2200  
Honolulu, HI 96841

5. You shall comply with all applicable local, state, national and international laws and regulations, including those related to data privacy, international communications, encryption and exportation or technical or personal data. You represent that you are not a specifically designated individual or entity under any US embargo or otherwise the subject, either directly or indirectly (by affiliation, or any other connection with another party) to any order issued by any agency of the US Government limiting, barring, revoking or denying, in whole or in part your US export privileges. You agree to notify Hawaiian Telcom if you become subject to any such order.

6. You shall not delete any proprietary designations, legal notices or other identifiers belonging to third parties from any information obtained or sent using the Service and shall not impersonate any person or use a false name while using the Service. You agree to obtain all required permissions if you use the Service to receive, upload, download, display, distribute, or execute Software or perform other works protected by intellectual property laws including copyright, trademark, trade secret and patent laws. You agree to cooperate with Hawaiian Telcom and provide requested information in connection with all security and use matters. You agree to notify Hawaiian Telcom promptly if you suspect unauthorized use of the Service or of your User ID. You remain liable for unauthorized use until your notification to Hawaiian Telcom at [AcceptableUse@hawaiiantel.net](mailto:AcceptableUse@hawaiiantel.net). You agree that your name, User ID, and other identifying information may be placed in our user directory.

7. Hawaiian Telcom reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrong. Such cooperation may include, but not be limited to, provision of account or user information or email as well as monitoring of the Hawaiian Telcom network.

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8. Hawaiian Telcom may, but is not required to monitor your compliance, or the compliance of other subscribers, with the terms, conditions or policies of this Agreement.

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