

# YOUR HAWAIIAN TELCOM CUSTOMER AGREEMENT

**Mahalo for choosing Hawaiian Telcom as your wireless services provider. Please carefully read this agreement, including the calling plan or plans you have chosen, before filing it in a safe place.**

By accepting this agreement, you are bound by its terms and conditions. It covers important topics such as how long it lasts, fees for early termination and late payments, our rights to change its conditions and your wireless service, limitations of liability, privacy, and settlement of disputes by arbitration instead of in court. If you accept this agreement, it will apply to all your wireless service from us, including all your existing calling plans and other lines in service.

## **Your Calling Plans, Features and Services**

**YOUR CALLING PLANS, THE TERMS AND CONDITIONS OF THEIR INCLUDED FEATURES, AND THE TERMS AND CONDITIONS OF ANY OTHER SERVICES YOU SELECT BECOME PART OF THIS AGREEMENT.** The prices you pay may depend in part on how long -- the minimum term -- you are agreeing in advance to do business with us. Calling plans describe these prices and your minimum term. To the extent any condition in your calling plan expressly conflicts with this agreement, the condition in your calling plan will govern. **If at any time you change your service, you will be subject to any requirements, such as a new minimum term, we set for that change.** Calling plans, as well as the terms and conditions of their included features and the optional services you select, are set forth in Hawaiian Telcom brochures (or other comparable documents) and may also be found on our Web site ([www.hawaiiantel.com](http://www.hawaiiantel.com)).

## **Your Rights to Refuse or Cancel This Agreement**

**THIS AGREEMENT STARTS WHEN YOU ACCEPT.** Paragraphs marked "♦" continue after this agreement ends. You accept when you do any of the following things after an opportunity to review this agreement:

- Give us a written or electronic signature;
- Tell us orally or electronically that you accept;
- Activate your service through your wireless phone;
- Open a package that says you are accepting by opening it; or
- Use your service after making any change or addition when we have told you that the change or addition requires acceptance.

**IF YOU DO NOT WANT TO ACCEPT, DO NOT DO ANY OF THESE THINGS.** You can cancel (if you are a new customer) or go back to the conditions of your former customer agreement (if you are already a customer) without additional fees if you tell us (and return to us in original condition any wireless phone you got from us with your new service) **WITHIN 14 CALENDAR DAYS** of accepting. You may be charged a restocking fee. You will still be responsible through that date for the activation fee and any charges associated with the service. Any refunds will be made in the same form in which the product was originally paid for.

## **Your Rights to Change or End Your Service; Termination Fees**

**♦ Except as explicitly permitted by this agreement, you are agreeing to maintain service with us for your minimum term** (Periods of suspension of service do not count towards your minimum term.). **After that, you will become a month-to-month customer under this agreement. YOU MUST PAY US \$199.99 PER WIRELESS PHONE NUMBER AS AN EARLY TERMINATION FEE IF YOU CHOOSE TO END YOUR SERVICE BEFORE BECOMING A MONTH-TO-MONTH CUSTOMER, OR IF WE TERMINATE IT EARLY FOR GOOD CAUSE (This fee applies only to the extent permitted by law. If you buy your wireless phone from an agent or third-party vendor, you should check to see if they charge a separate termination fee. This termination fee may be deducted from any deposits or amounts prepaid by you, charged to your credit card, or billed to your account. The termination fee is not pro-rated for the length of your service).** In addition, the activation fee is non-refundable if you cancel within your minimum term.

**All terminations during a monthly billing cycle become effective on the last day of that billing cycle.** You will remain responsible for all fees and charges incurred until then and will not be entitled to any partial month credits or refunds.

## **Condition of Returned/Exchanged Items**

The returned or exchanged item must be in original condition. The item must contain all included components, accessories, manuals and packaging materials. The UPC code must be uncut from the packaging. You must present the original receipt with a matching ESN if the item is a device. For exchanges, if the item is a device, there is a limit of one exchange per line.

### **Phone Number Portability**

You may be able to take, or "port," your current wireless phone number to another service provider. If you request your new service provider to port a number from us, and we receive your request from that new service provider, we will treat it as notice from you to terminate our service for that number upon successful completion of porting. You may not "port" your current wireless phone number if your account has been cancelled or suspended. You remain liable for charges incurred resulting from your service with us or service with your former carrier, including any termination fees. **After the porting is completed, you will not be able to use our service for that number. You will remain responsible for any early termination fee, and for all fees and charges through the end of that billing cycle, just like any other termination. If you are porting a phone number to us from another company, we may not be able to provide you some services, such as 911 location services, immediately.** We may charge you a fee for porting your wireless phone number to another service provider or when you port your phone number to us.

### **Our Rights to Make Changes**

Your service is subject to our business policies, practices, and procedures, which we can change without notice to the extent permitted by law. **UNLESS OTHERWISE PROHIBITED BY LAW, WE CAN ALSO CHANGE PRICES AND ANY OTHER CONDITIONS IN THIS AGREEMENT AT ANY TIME BY SENDING YOU WRITTEN NOTICE PRIOR TO THE BILLING PERIOD IN WHICH THE CHANGES WOULD GO INTO EFFECT. IF YOU CHOOSE TO USE YOUR SERVICE AFTER THAT POINT, YOU ARE ACCEPTING THE CHANGES. IF THE CHANGES HAVE A MATERIAL ADVERSE EFFECT ON YOU, HOWEVER, YOU CAN END THE AFFECTED SERVICE, WITHOUT ANY EARLY TERMINATION FEE, JUST BY CALLING US WITHIN 60 DAYS AFTER WE SEND NOTICE OF THE CHANGE. EXCEPT TO THE EXTENT PROHIBITED BY LAW, CHARGES FOR PRODUCTS, SERVICES, OPTIONAL SERVICES, OR ANY OTHER CHARGES THAT ARE NOT INCLUDED IN YOUR MONTHLY RECURRING ACCESS RATE PLAN (SUCH AS DIRECTORY ASSISTANCE, ROAMING, DOWNLOADS AND THIRD-PARTY CONTENT) ARE SUBJECT TO CHANGE AT ANY TIME WITHOUT NOTICE, AND IF YOU CONTINUE TO USE THOSE SERVICES, OR YOU OTHERWISE AGREE TO THE CHANGES, THEN YOU AGREE TO THE NEW CHARGES. VISIT OUR WEBSITE, RETAIL LOCATIONS, OR CALL CUSTOMER CARE FOR CURRENT CHARGES.**

### **Your Wireless Phone**

Your wireless phone is any device you use to receive our wireless voice or data service. It must comply with Federal Communications Commission regulations and be compatible with the network and your calling plan. **At times we may change your wireless phone's software or programming remotely and without notice. This could affect data you have stored on, or the way you have programmed, your wireless phone. There may also be times where we may need to reprogram, modify, or even substitute your wireless phone. In those cases, you agree to follow our instructions in delivering your wireless phone to us. Your wireless phone may also contain software that prevents it from being used with any other company's wireless service, even if it is no longer used to receive our service.**

### **Your Wireless Phone Number and Caller ID**

You do not have any rights in any personal identification number, e-mail address, IP address, or identifier we assign you (We will tell you if we decide to change or reassign them.). The same is true of your wireless phone number, except for any right you may have to port it. Your wireless phone number and name may show up when you call someone. You can block this "Caller ID" for most calls by dialing \*67 before each call, or by ordering per-line call blocking (dialing \*82 to unblock) where it is available. You cannot block Caller ID to some numbers, such as toll-free numbers.

### **How Service Works and Limits**

**The wireless service that we provide to you is provisioned from another company with which we have contracted (the "Network Provider"). Wireless phones use radio transmissions, so we cannot provide service when your wireless phone is not in range of one of the transmission sites of the company that has agreed to carry our customers' calls, or if there is not sufficient network capacity available at that moment. There are places, particularly in remote areas, with no service at all. Weather, environmental or atmospheric conditions, topography, buildings, your wireless phone and other conditions we do not control may also cause service to be temporarily interrupted, curtailed or otherwise limited, cause dropped calls or other problems. Coverage maps only approximate our wireless coverage area outdoors; actual service area coverage and quality may vary and change without notice. There may also be gaps in service within the estimated coverage areas shown on coverage maps. WE ARE NOT LIABLE FOR ANY SERVICE LIMITATIONS, FAILURES OR OUTAGES, INCLUDING WITHOUT LIMIT, THE FAILURE OF ALERTS, 911 EMERGENCY PRIORITY ACCESS OR SECURE SERVICE CALLS TO BE CONNECTED OR COMPLETED, OR THE FAILURE TO PROVIDE ALERTS OR ACCURATELY LOCATE ANY 911 CALL.**

### **Data Service**

If and when data service becomes available and if selected by you, you will have access to data service. Neither we nor the Network Provider provisioning wireless and data service on our behalf is a publisher of third party content that may be accessed through your wireless phone or other device. You agree that neither we nor that company is responsible for any content, including information, opinions, advice, statements or services that are provided by third parties and

accessible through your wireless phone or device. There are no guarantees provided concerning the accuracy, completeness, or usefulness of the information that may be obtained through your use of the data services.

### **Short Messaging Service**

Due to the transmission method we utilize, your wireless phone number or similar identification or information may be transmitted over the Internet when using SMS. In addition, when utilizing text messaging, you agree to comply with all applicable laws and/or regulations of any governmental agency.

### **Charges and Fees We Set**

◆ You agree to pay all access, usage, and other charges and fees we bill you or that the user of your wireless phone accepted, even if you were not the user of your wireless phone and did not authorize its use. These include Federal Universal Service Charges and Regulatory Charges, and may include other charges which help us recover or defray costs we incur in complying with various government regulations and initiatives. We set these charges. They are not taxes or other government-imposed assessment, are not required by law, are kept by us in whole or in part, and are subject to change without notice. You may have to pay fees to begin service or reconnect suspended service. Usage charges may vary depending on where, when, and how you call. You have a home rate area and a local calling area (which may be different). When you call from inside a local calling area to somewhere outside of it, or call from anywhere outside a local calling area, there may be toll, regional calling, or long distance charges in addition to airtime (We provide or select the long distance service for calls on the network.). When you make a call inside your local calling area that uses a local phone company's lines (for example, a call to a typical home phone number), we may charge landline or connection fees. We charge airtime for most calls, including toll-free and operator assisted calls. Additional features and services such as operator or directory assistance, call dialing, calling card use, call forwarding, data calls, automatic call delivery, voice mail, text messaging, and wireless Internet access may have additional charges and may incur airtime charges. Features such as call waiting, call forwarding, or 3-way calling involve multiple calls and multiple charges.

### **Taxes, Fees and Surcharges We Do Not Set**

◆ You agree to pay all taxes, fees, and surcharges set by the government. We may not always give advance notice of changes to these items. If you are tax-exempt you must give us your exemption certificates and pay for any filings we make.

### **Roaming and Roaming Charges**

You are "roaming" whenever you make or receive a call using a transmission site outside your home rate area, or using another company's transmission site. Your wireless phone may sometimes connect to and roam on another company's network even when you are within your home rate area or local calling area. **There may be extra charges (including charges for long distance, tolls, or calls that do not connect) and higher rates for roaming calls, depending on your calling plan. We may terminate service if a majority of minutes in a given month is used while roaming off our Network Provider's network.**

### **Free Nights and Weekends**

If your rate plan contains free nights and/or weekends, "nights" is defined as the period between 9:01 p.m., and 6:59 a.m., and weekends are defined as the period between 9:01 p.m., on Friday and 6:59 a.m., on the following Monday. If you are on a free nights and/or weekends plan, Federal public holidays are free also (beginning the preceding night at 9:01 p.m., and ending the next day at 6:59 a.m.)

### **Your Bill**

◆ Your bill is our notice to you of your fees and charges and other important information. You should read everything in your bill. **You agree that we may include charges for both communications-related and non-communications-related products and services on your bill.** We bill usage charges after calls are made or received. We bill access fees and some other charges in advance. You can view your detailed bill online. **We will also send you a summary bill without call detail. We may charge a fee for bill reprints.**

### **How We Calculate Your Bill**

Your bill reflects the fees and charges in effect under your calling plan at the time they are incurred. You can dispute your bill, but only within 60 days of the invoice date of the first bill containing the disputed call or charge. You must still pay any disputed charges until the dispute is resolved. **Charges may vary depending on where your wireless phone is when a call starts. If a charge depends on an amount of time used, we will round up any fraction of a minute to the next full minute. Time starts when you first press "SEND" or the call connects to a network on outgoing calls, and when the call connects to a network (which may be before it rings) on incoming calls. Time may end several seconds after you press "END" or the call otherwise disconnects. For calls made on the network, we only bill for calls that connect (which includes calls answered by machines). Most calls you make or receive during a billing cycle are included in your bill for that cycle. Billing for airtime (including roaming) and related charges may, however, sometimes be delayed. Delayed airtime may be applied in the month it appears on your bill against airtime included in your calling plan for that month, rather than against the included airtime for the month when you actually made or received the call. This may result in charges higher than you would expect in**

**the later month.** Data usage may be calculated on either a per kilobyte basis and rounded up to the next whole kilobyte, or on a per minute basis and rounded up to the next whole minute, or by specific service. Rounding occurs at the end of each session or each clock hour and, at that time, we will deduct accumulated data usage from your plan, or assess overage or casual usage charges. You are responsible for all data activity from and to your phone/device, regardless of who initiates the activity. Estimates of data usage will vary from actual use. In certain instances, we may delete premium and non-premium items downloaded to available storage areas (e.g., personal vault), including any pictures, games, ringtones or screen savers. Your invoice will not separately identify the number of kilobytes attributable to your use of specific sites, sessions or services used. Premium services (games, ringtones, etc.) will be priced separately.

#### **Payments, Deposits, Credit Cards and Checks**

♦ Payment is due in full within 30 (thirty) days after closing the billing cycle, as stated on your bill. IF WE DO NOT RECEIVE PAYMENT IN FULL WHEN DUE, WE MAY, TO THE EXTENT PERMITTED UNDER LAW, CHARGE YOU A LATE FEE OF UP TO 1.5 PERCENT A MONTH (18 PERCENT ANNUALLY), OR A FLAT \$5 A MONTH, WHICHEVER IS GREATER, ON UNPAID BALANCES. WE MAY ALSO CHARGE FOR ANY COLLECTION AGENCY FEES BILLED TO US FOR TRYING TO COLLECT FROM YOU. We may require an advance deposit (or an increased deposit) from you. We may impose a spending limit on your account or decrease it if your account already has a spending limit. We may change your payment due date based on credit qualifications. Please retain your evidence of deposit. You agree that we can apply deposits, payments, or prepayments in any order to any amounts you owe us on any account. You cannot use a deposit to pay any bill unless we agree. Unless otherwise required by law, we refund final credit balances of less than one dollar only upon request. We will not honor limiting notations you make on or with your checks. **We may charge you \$25 for any returned check or the highest allowed by law, whichever is less.** If you wish to dispute a particular charge or call, we must **receive** notification within 60 days of the first bill containing the disputed item.

#### **Suspension and Termination of Service**

If you need to temporarily suspend your service, you may do so, up to a maximum of 3 (three) months at a time. You will be charged \$5.95 per month while your phone is suspended, and you will be charged a \$15 service fee to reactivate your service at the end of the period of suspension. Unless you are a month-to-month customer at the time you suspend your service, the length of your contract will automatically be extended by the exact length of period of suspension.

Hawaiian Telecom may suspend your account under certain circumstances: (a) if your account spending limit has been reached or (b) if your deposit has been depleted or (c) if you are more than 30 days past due for your service payment (if you are a subscriber without a spending limit or deposit) or (d) if you are more than 5 days past due for your service payment (if you are a subscriber with a spending limit or deposit).

If Hawaiian Telecom suspended your service for reasons of late or non-payment, your service may be reinstated upon full payment of total balance accrued.

If you need to terminate your service before the stipulated date of expiration, you will be assessed a \$200 Termination Fee (not pro-rated). If Hawaii Telecom terminates your service for cause before the stipulated date of expiration, you will be assessed a \$200 Termination Fee (not pro-rated).

Termination will take effect immediately, unless if you otherwise notify Hawaiian Telecom in writing. Your MONTHLY RECURRING CHARGES will not be pro-rated for the days in service in the final billing cycle.

You are entitled to terminate service with no termination fee within 60 days of notification of a policy or service change if that change is material and adverse to you.

#### **Change of Rate Plans**

If you upgrade your rate plan (move to a plan with a higher base rate), there is no penalty or charge to you. If you wish to downgrade your rate plan (move to a plan with a lower base rate), your contract term, if you are under contract, will be the greater of your remaining contract term or 12 months. The new rate plan will become effective on the next billing cycle.

#### **Lost or Stolen Wireless Phone**

If your wireless phone is lost or stolen, you will not be liable for unauthorized airtime charges incurred on the Lost Phone if you: (a) notify us immediately; (b) ask us to deactivate the lost or stolen phone; and (c) provide within 14 days any documentation we request, including a police report. Even though you may deactivate the phone, you must still fulfill the remainder of your term by activating a replacement phone (which may be at full price) or the termination fee will apply.

#### **Our Rights to Limit or End Service or This Agreement**

You agree not to resell our service to someone else without our prior written permission. You also agree your wireless phone will not be used for any other purpose that is not allowed by this agreement or that is illegal. TO THE EXTENT PERMITTED BY LAW, WE CAN, WITHOUT NOTICE, LIMIT, SUSPEND, OR END YOUR SERVICE OR ANY AGREEMENT WITH YOU FOR THIS OR ANY OTHER GOOD CAUSE, including, but not limited to: (a) paying late more than once in any 12 months; (b) incurring charges larger than a required deposit or account spending limit (even if we have not yet billed the charges); (c) harassing our employees or agents; (d) lying to us; (e) interfering with our operations; (f) becoming insolvent or going bankrupt; (g) breaching this agreement; (h) "spamming," or other abusive messaging or calling; (i) modifying your wireless phone from its manufacturer's specifications; (j) providing credit information we cannot verify; (k) using your service in a way that adversely affects the network or other customers; or (l) allowing anyone to tamper with your wireless phone number. We can also temporarily limit your service for any operational or governmental reason.

#### **Directory Information**

To the extent that a wireless phone directory is published, we will not disclose your wireless phone number without your permission.

#### **Your Privacy**

◆ We have a duty under federal law to protect the confidentiality of information about the quantity, technical configuration, type, destination, and amount of your use of our service, together with similar information on your bills (This does not include your name, address, and wireless phone number.). Except as provided in this agreement, we will not intentionally share personal information about you without your permission. We may use and share information about you: (a) so we can provide our goods or services; (b) so others can provide goods or services to us, or to you on our behalf; (c) so we or our affiliates can communicate with you about goods or services related to the ones you already receive (although you can call us any time if you do not want us to do this); (d) to protect ourselves; or (e) as required by law, legal process, or exigent circumstances. In addition, you have authorized us to investigate your credit history at any time and to share credit information about you with credit reporting agencies. If you ask, we will tell you the name and address of any credit agency that gives us a credit report about you. It is illegal for unauthorized people to intercept your calls, but such interceptions can occur. For training or quality assurance, we may also monitor or record our calls with you.

We also do not guarantee that your wireless phone calls will be private or secure and we are not liable to you for any lack of privacy or security you may experience. In addition, if you use SMS, your wireless phone number or other similar identification or information may be transmitted over the Internet.

#### **Disclaimer of Warranties**

◆ WE MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE CONCERNING YOUR SERVICE OR YOUR WIRELESS PHONE. WE CANNOT PROMISE UNINTERRUPTED OR ERROR-FREE SERVICE AND DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF. THIS DOES NOT DEPRIVE YOU OF ANY WARRANTY RIGHTS YOU MAY HAVE AGAINST ANYONE ELSE.

#### **Waivers and Limitations of Liability**

◆ UNLESS THE LAW FORBIDS IT IN ANY PARTICULAR CASE, WE EACH AGREE TO LIMIT CLAIMS FOR DAMAGES OR OTHER MONETARY RELIEF AGAINST EACH OTHER TO DIRECT DAMAGES. THIS LIMITATION AND WAIVER WILL APPLY REGARDLESS OF THE THEORY OF LIABILITY, WHETHER FRAUD, MISREPRESENTATION, BREACH OF CONTRACT, PERSONAL INJURY, PRODUCTS LIABILITY, OR ANY OTHER THEORY. THIS MEANS THAT NEITHER OF US WILL SEEK ANY INDIRECT, SPECIAL, CONSEQUENTIAL, TREBLE, OR PUNITIVE DAMAGES FROM THE OTHER. You agree we are not liable for problems caused by you or a third party; by buildings, topography, network congestion, inadequate network coverage, tunnels, weather, or other things we do not control; or by any act of God. You also agree we are not liable for missed voice mails, or deletions of voice mails from your voice mailbox (if you have one), even if you have saved them. If another wireless carrier is involved in any problem (for example, while you roam), you also agree to any limitations of liability in its favor that it imposes.

#### **Dispute Resolution, Mandatory Arbitration, and Class Action/Jury Trial Waiver**

◆ ARBITRATION. PLEASE READ THIS PROVISION CAREFULLY. IT MEANS THAT, EXCEPT AS NOTED BELOW, YOU AND WE WILL ARBITRATE OUR DISPUTES. ANY CLAIM OR DISPUTE BETWEEN YOU AND US IN ANY WAY RELATED TO OR CONCERNING THE AGREEMENT, OR THE PROVISION OF SERVICES OR PRODUCTS TO YOU, INCLUDING ANY BILLING DISPUTES ("CLAIM"), SHALL BE SUBMITTED TO FINAL, BINDING ARBITRATION BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). This agreement to arbitrate also requires you to arbitrate claims against other parties relating to services or products provided or billed to you, including suppliers of services and products and our retail dealers, if you also assert Claims against us in the same proceeding. You and we acknowledge that the agreement affects interstate commerce and that the Federal Arbitration Act and federal arbitration law apply to arbitrations under the agreement.

BEFORE INSTITUTING ARBITRATION, YOU AGREE TO PROVIDE US WITH AN OPPORTUNITY TO RESOLVE YOUR CLAIM BY SENDING A WRITTEN DESCRIPTION OF YOUR CLAIM TO US AT HAWAIIAN TELCOM, 1177 Bishop St., Honolulu, Hawaii 96813, AND NEGOTIATING WITH US IN GOOD FAITH REGARDING YOUR CLAIM. IF WE ARE NOT ABLE TO RESOLVE YOUR CLAIM WITHIN 30 DAYS OF RECEIPT OF YOUR NOTICE, THEN YOU OR WE, INSTEAD OF SUING IN COURT, MAY INITIATE ARBITRATION PROCEEDINGS WITH THE AAA. YOU MUST SERVE OUR REGISTERED AGENT IN ORDER TO BEGIN AN ARBITRATION. ARBITRATION WILL BE CONDUCTED UNDER THE AAA'S PUBLISHED WIRELESS INDUSTRY ARBITRATION RULES AND SUPPLEMENTAL PROCEDURES FOR CONSUMER-RELATED DISPUTES, WHICH ARE AVAILABLE BY CALLING THE AAA AT 800-778-7879 OR VISITING ITS WEB SITE AT [www.adr.org](http://www.adr.org). The AAA has a fee schedule for arbitrations. You will pay your share of the arbitrator's fees and administrative expenses ("Fees and Expenses") except that: (a) for Claims less than \$25, we will pay all Fees and Expenses; and (b) for Claims between \$25 and \$1,000, you will pay only \$25 in Fees and Expenses, or any lesser amount as provided under AAA's Supplemental Procedures for Consumer-Related Disputes. You and we agree to pay our own other fees, costs, and expenses, including those for any attorneys, experts, and witnesses. An arbitrator may only award as much and the type of relief as a court with jurisdiction in the place of arbitration that is consistent with law and this Agreement. An arbitrator may issue injunctive or declaratory relief but only applying to you and us and not to any other customer or third party. As a limited exception to the agreement to arbitrate, you and we agree that: (a) you may take Claims to small claims court, if your Claims qualify for hearing by such court; and (b) if you fail to timely pay amounts due, we may assign your account for collection, and the collection agency may pursue in court claims limited strictly to the collection of the past due debt and any interest or cost of collection permitted by law or the agreement.

**CLASS ACTION WAIVER. WHETHER IN COURT, SMALL CLAIMS COURT, OR ARBITRATION YOU AND WE MAY ONLY BRING CLAIMS AGAINST EACH OTHER IN AN INDIVIDUAL CAPACITY AND NOT AS A CLASS REPRESENTATIVE OR A CLASS MEMBER IN A CLASS OR REPRESENTATIVE ACTION. NOTWITHSTANDING THE SEVERABILITY CLAUSE BELOW, IF A COURT OR ARBITRATOR DETERMINES IN A CLAIM BETWEEN YOU AND US THAT YOUR WAIVER OF ANY ABILITY TO PARTICIPATE IN CLASS OR REPRESENTATIVE ACTIONS IS UNENFORCEABLE UNDER APPLICABLE LAW, THE ARBITRATION AGREEMENT WILL NOT APPLY, AND YOU AND WE AGREE THAT SUCH CLAIMS WILL BE RESOLVED BY A COURT OF APPROPRIATE JURISDICTION, OTHER THAN A SMALL CLAIMS COURT.**

**JURY TRIAL WAIVER. WHETHER ANY CLAIM IS IN ARBITRATION OR IN COURT (AS PROVIDED IN THIS SECTION), YOU AND WE WAIVE ANY RIGHT TO JURY TRIAL INVOLVING ANY CLAIMS OR DISPUTES BETWEEN YOU AND US.**

#### **About You**

◆ You represent that you are at least 18 years old and have the legal capacity to enter into this agreement. If you are ordering for a company, you are representing that you are authorized to enter into this agreement and bind it, and agree to be personally liable for all accounts if you are not so authorized. Where the context requires, "you" means the company.

#### **About This Agreement**

◆ A waiver of any part of this agreement in one instance is not a waiver of any other part or any other instance. You cannot assign this agreement or any of your rights or duties under it without our prior written permission. We may assign all or part of this agreement or your debts to us without notice, and you agree to make all subsequent payments as instructed. We are then released from liability. NOTICES ARE CONSIDERED DELIVERED WHEN WE SEND THEM BY E-MAIL OR FAX TO ANY E-MAIL OR FAX NUMBER YOU HAVE PROVIDED TO US, OR 3 DAYS AFTER MAILING TO THE MOST CURRENT BILLING ADDRESS WE HAVE ON FILE FOR YOU, IF BY US, OR TO THE CUSTOMER SERVICE ADDRESS ON YOUR MOST RECENT BILL, IF BY YOU. If any part of this agreement, including any part of its arbitration provisions, is held invalid, that part may be severed from this agreement. This agreement and the documents to which it refers form the entire agreement between us on their subjects. You cannot rely on any other documents or statements on those subjects by any sales or service representatives, and you have no other rights with respect to service or this agreement, except as specifically provided by law. This agreement is not for the benefit of any third party except our parents, affiliates, subsidiaries, agents, and predecessors and successors in interest. Except to the extent we have agreed otherwise in the provisions on late fees and arbitration, this agreement and disputes covered by it are governed by the laws of the State of Hawaii, without regard to the conflicts of laws rules of that state.