

# Hawaiian Telcom's Residential Dialup and High Speed Internet Access Terms of Service

**WELCOME TO HAWAIIAN TELCOM!**

**THESE TERMS AND CONDITIONS CONTAIN IMPORTANT REQUIREMENTS REGARDING YOUR USE OF HAWAIIAN TELCOM'S RESIDENTIAL 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 as defined in Appendix A of this Agreement ("Hawaiian Telcom", "us" or "we"). 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 (see Paragraph 4) or the Equipment (see Paragraph 2); (c) your use of the Service (see Paragraph 2); 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, Privacy, Civil Subpoena, Newsgroups, Website Use, Email, Alias, Anti-Spam, Security and other policies as listed in the Appendices to this Agreement and the other policies and materials specifically referred to in these Terms of Service. The Agreement and related policies are also set forth on the Hawaiian Telcom Website located at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/). You may also receive a hard copy of this Agreement by writing to us at:

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

## **2. DEFINITION OF SERVICE.**

2.1 For purposes of this Agreement the term "Service" shall mean the Hawaiian Telcom Residential Dialup And High Speed Internet Access service, including all software (as defined in Paragraph 11 below), equipment, technical support, portal, Domain Name Service (DNS), Website hosting, newsgroup services, 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 Hawaiian Telcom "Residential Dialup And High Speed Internet Access", "DSL", "DSL & Internet Access", "High Speed Internet", "Ohana", "Ohana Net", "Hi Velocity", "Residential Email", "Email", "High Speed Internet without local service", "High Speed Internet", "High Speed Internet Access", "Broadband", "Dialup", "Online", "Online Consumer DSL", "ESG Storm Online", "Fast Packet" and may include "Basic", "Plus", "Premium", "Express", "Static", "Dynamic", "Internet Email", "Web Hosting" and/or "Email Service" depending on the specific services you have selected.

2.2 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 [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/) for changes to this Terms of Service Agreement.

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

3.1 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 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 your personal or billing information changes (including for example, your name, address, telephone number, and credit card number and expiration date).

3.2 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.

3.3 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 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.

3.4 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. Additional usage based pricing policies may be found in Appendix D of this Agreement.

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

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

4.1 You agree to comply with the terms of the Hawaiian Telcom's Dialup Access policies as found in this paragraph 4. 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.

4.2 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.

4.3 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.

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

4.5 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.

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

4.6.1 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.

4.6.2 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.

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

4.6.4 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.

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

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

4.8 Hawaiian Telcom also reserves the right in our sole discretion, with or without notice to you, to modify or restrict the bandwidth available to download content from our Usenet Newsgroup services.

**5. ACCEPTABLE USE POLICY.** You agree to comply with the terms of the Acceptable Use Policy, which is attached hereto as Appendix B and which also may be found posted on the Website at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/).

**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 [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/). You agree to visit these pages periodically to be aware of and review any such revisions. Increases to the monthly price of the Service (excluding other charges as detailed in Paragraphs 15.1(a)-(d)) 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. ALIASES.** Hawaiian Telcom will issue email aliases (alternate email addresses) based upon availability of the alias selected. If you surrender your alias by changing it, or if your account is terminated for any reason, Hawaiian Telcom will not reserve that alias for you or receive or forward emails addressed to that alias. You agree to comply with the terms of the Email, Alias & Anti-Spam policy, which is attached hereto as Appendix F and which also may be found posted at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/).

**8. CIVIL SUBPOENA REQUEST POLICY.** You agree to comply with the terms of the Civil Subpoena Request Policy, which is attached hereto as Appendix E and which also may be found posted on the Website at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/).

**9. SECURITY POLICY.** 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 & OTHER INTERNET SECURITY SOFTWARE.** You agree to comply with the terms of the Hawaiian Telcom Security Policy, which is attached hereto as Appendix I and which also may be found posted on the Website at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/). Additionally, please visit the Hawaiian Telcom Customer Security Guidelines page as located at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/) for information on ways to further secure yourself from known security risks.

## **10. AVAILABILITY OF SERVICE.**

10.1 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 throughput speeds, line rate access to Usenet newgroups and availability of your Service are not guaranteed, (see Paragraph 19). Hawaiian Telcom reserves the right to limit Usenet download speeds.

10.2 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.

10.3 Changes to your local voice telephony service. If you change your local telephone company, or move your local telephone service to a wireless or Internet telephony service provider, we may in our discretion either terminate your Service or continue to provide High Speed Internet Access without local service at the then-current rates, terms and conditions applicable to your new Service arrangement. You agree to pay any higher monthly fee that may apply to your new Service arrangement. Please see Paragraph 15.1.1 for additional terms relating to price changes. If we elect to terminate your Service under this Paragraph 10.3, then we reserve the right to charge any early termination fees that may apply, and you will be required to return any Equipment you received at no charge from Hawaiian Telcom or an Equipment fee will apply.

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

11.1 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 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 only as part of or for use with the Service and for no other purpose.

11.2 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.

11.3 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. The Software may be used in the United States only, and any export of the Software is strictly prohibited.

11.4 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.

11.5. 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.

**11.6 Other Third Party Agreements.** 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.

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

Hawaiian Telcom's website as well as customer's personal Website Use, Content and Digital Multimedia Access ("Ohana Net") may be made available to you as an optional feature of the Service. You agree to comply with the terms of the Hawaiian Telcom Website Use, Content and Digital Multimedia Policy which is attached hereto as Appendix H which is located at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/). In the event of a breach by you of this Agreement or the terms and conditions applicable to [www.hawaiiantel.net](http://www.hawaiiantel.net) or Ohana Net, Hawaiian Telcom reserves the right to immediately terminate your Website use without notice. Hawaiian Telcom reserves the right to delete all data, files, and other information stored on or for your Ohana Net site upon termination of your Service for any reason. You understand that we do not provide telephone technical support for the Ohana Net site.

## **13. EMAIL MESSAGING, ANTI-SPAM & WEBMAIL ACCESS SERVICE.**

**13.1 Email Service.** Use of Hawaiian Telcom's email service is subject to Hawaiian Telcom's email and anti-spam policies, including limitations on the number and/or size of email that may be sent during a given time period, or the number of recipients of a particular email. You agree to comply with the terms of the Hawaiian Telcom Email, WebMail Access, Alias & Anti-Spam Policy, which is attached hereto as Appendix F and which also may be found posted on the Website at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/).

## **14. TERM AND TERMINATION.**

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

14.1.1 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 14, until terminated by either party as permitted by this Agreement. 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").

14.1.2 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.

14.1.3 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.

**14.2 High Speed Internet Service Money Back Guarantee.** Hawaiian Telcom provides a thirty (30) day money back guarantee as follows:

14.2.1 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.

**14.3 Termination of Service.**

14.3.1 **High Speed Internet or Dialup Subscribers with Month-to-Month Accounts.** If you are a month-to-month High Speed Internet Service or Dialup 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 notice to Hawaiian Telcom. 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.

14.3.2 **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.

14.3.3 **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 B; (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) if 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 14.3.3, you shall be liable for the applicable fees and/or Equipment charges set forth in Paragraphs 14.3, 14.3.1, or 14.3.2, (depending on which fees or charges are applicable).

14.4 **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.

14.5 **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.

14.6 **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.

**14.7 Return of Equipment and Software by Subscribers that Order Service before May 8, 2006.** Upon early termination of this Agreement (before the 12 month term is satisfied), you agree to return to Hawaiian Telcom all Equipment (other than Equipment you have purchased from Hawaiian 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 Equipment and Software is not returned to us within thirty (30) calendar days following such termination or expiration, Hawaiian Telcom reserves the right to charge you, and you agree to pay, the undepreciated list price of the unreturned Equipment and Software.

**14.8 Return of Equipment and Software by Subscribers that Order Service on or after May 8, 2006.** Notwithstanding any other language in this Agreement to the contrary, if you placed your order for Service on or after May 8, 2006 then upon termination of this Agreement you agree to return to Hawaiian Telcom all Equipment (other than Equipment you purchased from Hawaiian 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 Equipment and Software is not returned to us within thirty (30) calendar days following such termination or expiration, Hawaiian Telcom reserves the right to charge you, and you agree to pay, the undepreciated list price of the unreturned Equipment and Software.

## **15. PRICING AND PAYMENT.**

**15.1 Prices and Fees.** 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. 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.

**15.1.1 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.

**15.2 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.

**15.3 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.

**15.4 Local Telephone, Toll and Long Distance Charges.** Whether you are accessing the Service from your home or away from your home, you are responsible for all telephone charges, and Hawaiian Telcom does not guarantee or warrant that any Dialup access numbers provided will be a local call from your location. HAWAIIAN TELCOM IS NOT RESPONSIBLE FOR ANY CHARGES, INCLUDING BUT NOT LIMITED TO, LONG DISTANCE AND METERED LOCAL OR TOLL CHARGES INCURRED WHEN YOU ACCESS THE SERVICE. YOU SHOULD CHECK WITH THE LOCAL PHONE COMPANY TO DETERMINE WHETHER A DIALUP NUMBER YOU HAVE SELECTED IS A LOCAL CALL FROM YOUR LOCATION AND WHETHER ANY CHARGES APPLY. ADDITIONAL CHARGES, WHICH MAY BE SUBSTANTIAL, APPLY TO REMOTE DIAL UP ACCESS, WHICH IS AVAILABLE FROM CERTAIN LOCATIONS ONLY.

**15.5** You are limited to taking advantage of no more than one special pricing promotion during any twelve-month period.

**15.6** You have the option to change your Service(s) at any time by notifying us, provided that you qualify for and comply with any requirements of that Service.

**15.7** The waiver of any fees or charges lies solely in the discretion of Hawaiian Telcom.

15.8 A third party Global Service Provider (GSP) provides a roaming capability in conjunction with Hawaiian Telcom Dialup Internet Access Service that allows users (subject to any applicable roaming surcharge) to dial the local numbers of GSP-provided POPs to reach the Hawaiian Telcom Internet Service while outside of the Hawaiian Telcom Internet service areas. If you elect to use such GSP local access, you will be charged by the GSP and may see a separate charge for such service on your bill. Such GSP local access service is provided by the GSP on the GSP's terms and conditions as outlined in Appendix D and at the prices or surcharges set forth in the customer agreement as outlined at signup of the Dialup Service.

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

**16.1 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.

**16.2 Data Management and Responsibility.** 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.

**16.4 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.

**16.5 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.

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

17.1 You agree that your use of the Service and the Internet, without limitation, is your sole responsibility, is solely at your own risk, and is subject to all applicable local, state, national and international laws and regulations. This includes US encryption regulations.

17.2 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.

17.3 You agree and acknowledge that through your use of the Service, you may have access to information, which may be sexually explicit, obscene or offensive, or otherwise unsuitable or objectionable, especially for children under the age of 18 years old. You agree to supervise usage of the Service by any minors who use your account to access the Service. Hawaiian Telcom is not responsible for access by any users, you, or minors, to objectionable or offensive information or data. If you discover an acceptable use violation, as outlined in our Acceptable Use policy located at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/) you may send an email to [AcceptableUse@hawaiiantel.net](mailto:AcceptableUse@hawaiiantel.net). HAWAIIAN TELCOM STRONGLY RECOMMENDS THE USE OF COMMERCIALY AVAILABLE CONTENT FILTERING SOFTWARE. We outline popular solutions to security risks of Internet usage on our Website [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/).

17.4 You agree that Hawaiian Telcom cannot and does not guarantee or warrant that data available for downloading through the Service will be free of defects, infection or viruses, worms, Trojan horses or other code that manifest contaminating, malicious or destructive properties. You are responsible for implementing adequate procedures to satisfy your particular requirements for accuracy of data input and output and for maintaining a means external to the Service for the reconstruction of any lost data.

17.5 You agree that the Internet is not a secure network and that third parties may be able to intercept, access, use, or corrupt the information you transmit or receive over the Internet. Hawaiian Telcom is not responsible for invalid destinations,

transmission errors, or corruption or security of your data.

17.6 You are not authorized to use any Hawaiian Telcom name or mark as a hypertext link to any Hawaiian Telcom Website or in any advertising, publicity or in any other commercial manner without the prior written consent of Hawaiian Telcom. You understand that your ability to link to a Website through the Service does not, in any way, represent or imply Hawaiian Telcom's approval of, or its determination of the quality of that product or service, and that links are provided for your convenience only. The links provided through the Service are maintained by their respective organizations, which are solely responsible for their content.

**18. PRIVACY POLICY.** Hawaiian Telcom will treat your personal information in accordance with its current Privacy Policy, subject to change from time to time, which is attached hereto as Appendix C and posted on the Website at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/). 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.

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

19.1 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.

19.2 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 OF 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 YOUR COMPUTER/DEVICE CONFIGURATION AND CAPABILITIES, 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).

19.3 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.

19.4 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.

19.5 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.

19.6 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.

19.7 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.

19.8 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.)

**20. 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.

## 21. NOTICES.

21.1 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.net](http://www.hawaiiantel.net) 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 [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/) as set forth in Paragraph 6, Revisions, above.

21.2 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.

## 22. GENERAL PROVISIONS.

22.1 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.

22.2 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.

22.3 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.

**22.4 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.**

22.5 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 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.

22.6 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.

22.7 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.

22.8 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.

## APPENDIX A

### Affiliated Providers Policy

Hawaiian Telcom Policy: HTP-550

The Hawaiian Telcom Services Company, Inc. affiliated providers include:

- Hawaiian Telcom, Inc.

The Hawaiian Telcom Services Company, Inc. may in the future designate other affiliated providers.

## APPENDIX B

### Acceptable Use Policy

#### Hawaiian Telcom Policy: HTP-520

You agree to comply with the terms of the Acceptable Use Policy, which may be found posted on the Hawaiian Telcom Website at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/). If you have any questions or concerns about our Acceptable Use policies, please send us an email at [AcceptableUse@hawaiiantel.net](mailto:AcceptableUse@hawaiiantel.net) or send a letter via US mail to the following address:

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

1. 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.
2. Hawaiian Telcom reserves the right to deny Service to you, or immediately to terminate your Service for material breach, if your use of the Service or your use of an alias or the aliases of additional users on your account, whether explicitly or implicitly, and in the sole discretion of Hawaiian Telcom: (a) is obscene, indecent, pornographic, sadistic, cruel or racist in nature, or of a sexually explicit or graphic nature; (b) espouses, promotes or incites bigotry, hatred or racism; (c) might be legally actionable for any reason, (d) is objectionable for any reason, or (e) in any manner violates the terms of this Acceptable Use Policy.
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; (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.

Usenet Policy and Posting Restrictions: Usenet comprises a system of bulletin boards called newsgroups. Usenet access is provided to Internet access customers of Hawaiian Telcom through the Hawaiian Telcom network. Hawaiian Telcom Usenet may not be accessed via any other network. You may open no more than five simultaneous connections to newsgroups at any one time. You may not rapidly open and close or create connections for users other than yourself (our Subscriber). Hawaiian Telcom will carry newsgroups at their sole discretion. We also reserve the right in our sole discretion, with or without notice to you, to modify or restrict the bandwidth available to download content from our Usenet Newsgroup services. Requests to add a newsgroup, from any source, will be evaluated on a case-by-case basis and added at Hawaiian Telcom sole discretion. You must familiarize yourself with the subjects and established guidelines and restrictions of any newsgroup in which you participate and we reserve the right, in our sole discretion to terminate your Service in the event you violate newsgroup guidelines or restrictions.

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 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.

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.

# APPENDIX C

## Privacy Policy

### Hawaiian Telcom Policy: HTP-530

You agree to comply with the terms of the Privacy Policy, which also may be found posted on the Website at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/). If you have any questions or concerns about our privacy policies, please send us an email at [privacy@hawaiiantel.net](mailto:privacy@hawaiiantel.net) or send a letter via US mail at the following address:

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

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:

- Anonymous statistics collected as you browse the site, and
- Personal information you knowingly give us.

We want you to be aware of what information we collect, and how we handle this information. The following areas are discussed in this privacy policy:

What Information Does The Hawaiian Telcom Website Gather?  
How Does Hawaiian Telcom Combat Phishing and Email Spoofing?  
Network Performance And Your Internet Connection  
What Happens To Information When I Fill Out Registration Forms?  
Who Has Access To This Information?  
Does This Site Send Email To Site Visitors?  
What Are Cookies And Why Do You Use Them?  
Do You Accommodate Links To Other Sites?  
What Is Hawaiian Telcom's Position Regarding Online Advertising and Third Party Ad Servers?  
Non-Personally Identifiable Information  
Protection Of Children's Personal Information  
Personally Identifiable Information  
Does Hawaiian Telcom Use The Information Provided Online To Profile Its Customers?  
Changes to This Policy

### What information does the Hawaiian Telcom Website gather?

Please be assured that we do not collect personal information from you unless you provide it to us. This means that you can visit our Websites without telling us who you are or revealing any information about yourself (such as your e-mail address, software you are using, or any information about yourself).

As you browse the site, our web servers collect information about your visit, not about you personally. Via web server logs, we monitor statistics such as:

- How many people visit our site
- Which pages people visit on our site
- From which domains our visitors come (e.g., aol.com)
- Which browsers people use to visit our site

None of this information is associated with you as an individual. We use these statistics to improve our Website, to monitor its performance, and to make the Website easier for you and other visitors to use.

### What Hawaiian Telcom pages ask for personal information?

When visitors supply information about themselves for a specific purpose, we use the information for that purpose (such as to provide the Service or information the visitor has requested).

For example, you may be asked to give us individual information to purchase a product or service, receive information, manage online account registration, or apply for a job. The information may range from your zip code, to your phone number, account number, a credit card number, age, gender, mother's maiden name, social security number, e-mail address, organization URL, resume, or mailing address.

When visitors use our Website to order Services, we may use this individually identifiable information as we would use the same information obtained in a traditional non-electronic manner. For example, to publish your name, address, and phone number in our directories (unless you have requested a non-published number), or to evaluate your service needs and contact you regarding additional services you may find useful.

Should any changes be made in the way we use personally identifiable information, Hawaiian Telcom may notify you of this change by posting a notice on its privacy policy Website located at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/).

## **How does Hawaiian Telcom combat phishing & email spoofing?**

Hawaiian Telcom does not ask you to disclose sensitive personal information such as credit card information or banking information in an email. If we provide online access to your account, you will be asked to enter your login name and password for authentication purposes. When receiving emails with links requesting such sensitive information, it is possible they are suspicious forms of Phishing or Email Spoofing. Phishing emails are attempts to steal consumers' personal identity data and financial account credentials. 'Spoofed' emails are those which mimic an email from a real branded corporate address such as security@ebay.com to lead consumers to counterfeit Websites designed to trick recipients into divulging financial data such as credit card numbers, account usernames, passwords and social security numbers. When replying to such emails, the reply often goes somewhere other than the email's address as sent. This is done by hijacking brand names of banks, e-retailers and credit card companies, phishers often convince recipients to respond. It is best to simply not respond to such emails, and contact your bank/financial institution directly to see if there messages or other important information by following normal logon protocols.

Our normal practice is to send you an email confirming significant changes made to your account online, such as, updates to the email address registered with us, payments on an account, or new services added.

You can protect yourself by regularly logging into your online account to ensure that all transactions are legitimate. Other tips on how you can protect yourself can be found at [http://www.antiphishing.org/consumer\\_recs.html](http://www.antiphishing.org/consumer_recs.html).

## **Network performance and your Internet connection**

Hawaiian Telcom automatically measures and monitors network performance and the performance of your Internet connection in order to improve the level of your Service. Hawaiian Telcom also will access information about your computer's settings in order to provide customized technical support. You can be assured that no adjustments to your computer settings will be made without your permission, which you give at the time that the adjustments are being made, and which you can revoke at any time. Hawaiian Telcom does 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.

## **What happens to information when I fill out registration forms?**

We encourage all visitors to register with us, although registration is only required for certain transaction-related areas of the [www.hawaiiantel.net](http://www.hawaiiantel.net) or other Hawaiian Telcom or co-branded sites. The registration forms request accurate contact information (like name and e-mail address) and preferences that help us better serve you. Your name and email address are used to send you information about our company, product updates, special offers, and newsletters. You may change your email, user ID or password online; or you can choose to remove your name from our user list by going to contact us and emailing us a request to remove your name from the online billing application.

For our local phone service customers, you may also be given the option of registering a profile with us (limited to specific areas). This would store your name, purchase history, and billing information to make it easier for you to shop and purchase products/services from us in the future. You may opt out of this feature at any time by either contacting us by emailing us your request, or in some applications you can cancel/change your profile within the application itself.

We strive to ensure that the information we obtain and use about customers is accurate. Please contact us to review or modify any personal information we have previously collected from you online or if you find an error in your bill. Customers have access to their account information via our monthly bills. To improve the services we can offer you, we may decide to expand

the site's capabilities for obtaining information about users in the future. We will update this privacy statement continually to ensure that you are aware of developments in this area.

## **Who has access to this Information?**

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 by law, 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 provide individually identifiable information to us in the context of an event Hawaiian Telcom sponsors with another company, such as a contest, or if you register on a co-sponsored site or feature, you may also be providing the individually identifiable information to the co-sponsor. For example, on Hawaiian Telcom co-branded sites, our partner will generally co-own the customer information received through the site. How the partner uses this information will be explained in the privacy statement at the co-branded site, which will govern the use of data gathered through the co-branded site.

Hawaiian Telcom may share non-personally identifiable information with non-Hawaiian Telcom companies in order to assess the results of a promotion or event. This information is used in aggregate only, and does not contain any information that would personally identify you.

## **Does this site send e-mail to site visitors?**

At times, online surveys are conducted in which you can choose to participate. In addition, we may use e-mail to communicate with our customers, to respond to visitors' e-mail, to confirm orders placed online, and to send information that a visitor has requested. Occasionally, we may use opt-in e-mail lists from third parties to promote our latest specials. If you receive an unwanted e-mail from us, you can use the Reply feature on your browser and simply ask us to remove you from our list.

## **What are cookies and why do you use them?**

A cookie is a small, encrypted data string our server writes to your hard drive that contains your unique User ID for our Website. We may use cookies to deliver web content specific to your interests, to keep track of your order as you order services, and to control access to our premium content. A cookie cannot be used to access or otherwise compromise the data on your hard drive. You can choose to change your browser settings to disable cookies if you do not want us to establish and maintain a unique Hawaiian Telcom User ID. Please be aware that cookies may be required to complete certain functions on the Hawaiian Telcom Website, such as ordering in our online store.

## **Do you accommodate links to other sites?**

The Hawaiian Telcom Website contains links to other Websites. We are not responsible for the content or the privacy policies employed by other sites. We are committed to safeguarding customer privacy on all our Websites. We require our employees to protect the privacy of information about our customers and expect our partners and suppliers to do so as well. You can feel confident that your individually identifiable information will be protected when you access your account or order services from us over the Internet.

## **What is Hawaiian Telcom's position regarding online advertising and third party ad servers?**

As part of the online advertising process, we use information supplied from third party companies in several ways however, this is aggregated data and does not personally identify any individual online user. This data is used to:

- gain a better understanding of the type of individuals viewing or visiting different Websites,
- evaluate and prioritize site selection when developing online media plans,
- geographically target advertising,
- deliver product and pricing advertising/information applicable to the customers' state, and gauge the effectiveness of our online advertising.

Personally identifiable information such as name, address, phone number or email address is not collected.

In addition, some Hawaiian Telcom Websites may accept advertisements from third party advertisers. These advertisers are carefully selected to provide information about products and services that we think may benefit Hawaiian Telcom customers. These third party advertisers may collect non-personally identifiable information about users of this Website for the same

reasons listed above, but personally identifiable information is not collected. Hawaiian Telcom does not have control of nor access to any information contained in the cookies that are set by third party advertisers.

## **Non-Personally Identifiable Information**

Cookies help Hawaiian Telcom to enhance the user's online experience and are used to:

- deliver the appropriate geographic message
- manage frequency of ad exposure; avoid over delivery of the same message
- tailor an advertisement to better match your interests and preferences
- ensure that you see the correct products and pricing applicable to the state in which you live
- understand advertising effectiveness

However, customers are free to delete Website cookies. Most internet browsers enable you to erase cookies from your computer hard drive, block all cookies, or receive a warning before a cookie is stored.

However, you need to understand that some Websites / ad-serving companies have the ability to reestablish your history even after cookie deletion, if you reenter the same site on another occasion, or some other site tracked by the ad-serving company/network, and specifically provide personal data.

Deletion of cookies alone does not prevent ad-serving companies from reestablishing history on a visitor. The visitor must either continue to decline cookies each time it reenters the site to keep the tracking severed, if desired, or opt-out. When you opt-out, your unique user ID cookie is erased and you are reassigned an anonymous, non-id cookie. This new cookie tells Websites that you have opted out and they will then know not to attempt to assign other cookies to you in the future. Opt-out cookies do not contain a unique user ID number therefore Websites are not able to identify your computer uniquely.

Customers who choose to continually delete cookies and not opt out can have their browser advise them each time a Website attempts to send a cookie to your system. At that time, you can choose to either Accept or Cancel a cookie.

Customers who choose to "opt out" after deleting cookies will receive an anonymous/non-personally identifiable cookie.

## **Personally Identifiable Information**

Personally identifiable information voluntarily supplied by our customers or our visitors, i.) who receive or provide information on our Website, or ii.) who purchase Hawaiian Telcom products on our Website, or iii.) who interact with our banners/advertising on outside Websites, is not shared for use outside Hawaiian Telcom or its authorized vendors, contractors and agents. This information is Hawaiian Telcom proprietary data and is not available to any outside company in this personalized form, except with a customer's or visitor's permission or where disclosure is otherwise required or permitted by law. No outside company is allowed access to this information.

For example, if you provide us with information (such as phone number or email address) and ask to be contacted when High Speed Internet Service is available in your area, we will notify you when High Speed Internet Access is available; or, if you enter such information online and qualify for High Speed Internet service, we may contact you to provide additional information and to follow up on your inquiry. If you are contacted by telephone as a follow up to your inquiry, you may request to be removed from our calling list at that time. We will not use this information for any other reason nor will we share it with any outside company.

Should any changes be made in the way we use personally identifiable information, Hawaiian Telcom will contact you via email, or by other means, notifying you of this change, and give you the opportunity to choose to opt-out of such use.

## **Protection of Children's Personal Information**

Hawaiian Telcom Website Services are not designed to attract children under the age of 18. Although we do feature sites that may be of interest to young viewers, we do not collect personally identifiable information on children. Further, Hawaiian Telcom offers tools for parents to educate young Internet users on safe surfing practices, including filtering tools to help children and parents avoid objectionable content online. GetNetWise.org and SafeKids.com are two sites that offer tools for providing information on safe Internet usage. For more information, go to [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/).

## **Does Hawaiian Telcom use the information provided online to profile its customers?**

The combination of offline and online information provided by the customer has the ability to enhance the customer experience, and make the consumer's interaction with Hawaiian Telcom more meaningful and relevant. Hawaiian Telcom requires notification of any consumer profiling or purchasing behavior being captured by Hawaiian Telcom Online and combined with offline information be clearly stated to the consumer at the time of online data collection. The consumer will have the ability to choose not to have that information aggregated and be part of subsequent marketing campaigns by choosing to be identified within the application.

## **Please note**

We may disclose personal information when required by law or when necessary to protect the safety of our customers, employees or property.

## **Changes to this Policy**

Please check this privacy policy periodically to inform yourself of any changes. Although we reserve the right to modify or supplement this policy, we will provide notice to you on the Website located at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/) of any major material changes and those changes are effective upon posting unless otherwise noted.

## APPENDIX D

### Usage Based Pricing Policy

#### Hawaiian Telcom Policy: HTP-595

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.

# APPENDIX E

## Civil Subpoena Policy

Hawaiian Telcom Policy: HTP-560

You agree to comply with the terms of the Civil Subpoena Request Policy, which may be found posted on the Website at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/). 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, 1st Floor  
Hawaiian Telcom Services Company, Inc.  
1177 Bishop Street  
Honolulu, HI 96813

**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:

"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.

**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.

## APPENDIX F

### Email, Alias & Anti-Spam Policy

Hawaiian Telcom Policy: HTP-570

You agree to comply with the terms of the Email, Alias & Anti-Spam Request Policy, which may be found posted on the Website at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/). If you have any questions or concerns about our Email, Alias or Anti-Spam policies, please send us an email at [EmailAntiSpam@hawaiiantel.net](mailto:EmailAntiSpam@hawaiiantel.net) or send a letter via US mail at the following address:

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

**Rules.** While visiting the Hawaiian Telcom Email Messaging Site, you may also not: post, transmit or otherwise distribute information constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability, or otherwise use the Email Messaging Site in a manner which is contrary to law or would serve to restrict or inhibit any other user from using or enjoying the Email Messaging Site or the Internet; post or transmit any information or software which contains a virus, cancelbot, trojan horse, worm or other harmful or disruptive component; upload, post, publish, transmit, reproduce, or distribute in any way, information, software or other material obtained through the Email Messaging Site which is protected by copyright, or other intellectual property right, or derivative works with respect hereto, without obtaining permission of the copyright owner or rightholder.

**Monitoring.** Hawaiian Telcom has no obligation to monitor the Email Messaging Site. However, you agree that Hawaiian Telcom has the right to monitor the Email Messaging Site electronically from time to time and to disclose any information as necessary to satisfy any law, regulation or other governmental request, to operate the Hawaiian Telcom Site properly, or to protect itself or its subscribers. Hawaiian Telcom will not intentionally monitor or disclose any private electronic-mail message unless required by law. Hawaiian Telcom reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable, undesirable, or in violation of this Agreement.

**Email Messaging Service Termination of Service Policies.** Email Messaging Service may be made available to you as an optional feature of certain High Speed Internet packages if you have your own domain name. Additional terms and conditions applicable to Email Messaging Service. In the event of a breach by you of the terms and conditions applicable to the Email Messaging Service, Hawaiian Telcom reserves the right to terminate your Email Messaging Service immediately without notice. Hawaiian Telcom also reserves the right to delete all data, files, and other information stored on or for your Email Messaging Service upon termination of your Service for any reason. Hawaiian Telcom also reserves the right to change email addresses in the process of transitioning services from the previous provider of Email service.

**Email Sending.** The following are email sending limitations:

- You may send a single email message to a maximum of 100 recipients in one mailing, not to exceed 500 recipients within a one hour period. All single emails sent to over 100 addressees will not be delivered. No notice will be given to you in this case.
- If you send emails to more than 500 recipients within a one hour period, your ability to send ANY email messages is suspended for 24 hours. You will receive a Notice regarding this action.

Hawaiian Telcom reserves the right to take all legal and technical steps available to prevent unsolicited bulk email or other unauthorized email from entering, utilizing or remaining within the Hawaiian Telcom Network. Such action may include, without limitation, the use of filters or other network devices, immediate termination of Hawaiian Telcom service, and prosecution of offenders through criminal or civil proceedings. Nothing in this policy shall be construed to grant any right to transmit or send email to, or through, the Hawaiian Telcom Network, and in no event shall any failure by Hawaiian Telcom to enforce this policy constitute a waiver of Hawaiian Telcom's rights.

Unauthorized use of the Hawaiian Telcom Network in connection with the transmission of unsolicited bulk email, including the transmission of counterfeit email, may result in civil and criminal penalties against the sender, including those provided by the Computer Fraud and Abuse Act (18 U.S.C. § 1030 et seq.); and various state laws on cyberstalking, theft & fraud, electronic surveillance, law enforcement, etc. as located at the Website <http://www.ncsl.org/programs/lis/legislation/compcrime01.htm>

**Buying over the Internet.** When making purchases or other transactions through the Hawaiian Telcom Email Messaging Site or the Internet, you may be asked by the Merchant or information or service provider to supply certain information, including credit card or other payment mechanisms. You agree that all information you provide any merchant or information or service

provider through the Email Messaging Site will be accurate and complete. You agree to pay all charges incurred by you or other users of your account and credit card or other payment mechanisms at the prices in effect when such charges are incurred. You also will be responsible for paying all applicable taxes, if any, relating to purchases on the Email Messaging Site. Hawaiian Telcom is in no way responsible for any charges you or any user of your account incurs when making purchases or other transactions in this manner.

**Email Privacy Policies.** 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 Internet'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 is 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 Internet 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 Internet's email system.

**Hawaiian Telcom's Unsolicited Bulk Email (Anti-Spam) Policy:** Hawaiian Telcom specifically does not authorize the use of its proprietary computers, servers, routers and computer network (the "Hawaiian Telcom Network") to accept, transmit or distribute unsolicited bulk email sent from the Internet to Hawaiian Telcom subscribers (or to others). It is also a violation of Hawaiian Telcom policy, and the law, to send or cause to be sent to, or through, the Hawaiian Telcom Network email that makes use of or contains invalid or forged headers, invalid or non-existent domain names or other means of deceptive addressing. Hawaiian Telcom considers such email to be unlawful and a violation of our policy, and any attempt to send or cause such email to be sent to, or through, the Hawaiian Telcom Network is unauthorized. Moreover, any email relayed from a third party's mail servers without the permission of that third party, or any email that hides or obscures, or attempts to hide or obscure, the source of an email also constitutes an unauthorized use of the Hawaiian Telcom Network. Email sent or caused to be sent to the Hawaiian Telcom Network that violates your agreement with Hawaiian Telcom is also unauthorized. Nor does Hawaiian Telcom authorize the harvesting or collection of screen names from the Hawaiian Telcom Service for the purpose of sending unsolicited email. Any such action also constitutes violation of Hawaiian Telcom policy.

**Hawaiian Telcom's Email Alias Policy:** Hawaiian Telcom will issue email aliases based upon availability of the alias requested. If you surrender your alias by changing it, terminating your account, or because your account is terminated for cause, VIS shall not be obligated to reserve that alias for you or to receive or forward emails addressed to that alias. This policy may be changed without notice

## APPENDIX G

### Newsgroup Posting Policy

Hawaiian Telcom Policy: HTP-580

You agree to comply with the terms of the Civil Subpoena Request Policy, which may be found posted on the Website at **support.hawaiiantel.net/policies/**. If you have any questions or concerns about our Newsgroup Posting policies, please send us an email at [newsgroups@hawaiiantel.net](mailto:newsgroups@hawaiiantel.net) or send a letter via US mail at the following address:

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

It is a violation of Hawaiian Telcom policy to add messages to newsgroups 1) that are clearly inappropriate given the intended purpose or scope of the newsgroup, including adding commercial postings to newsgroups of a non-commercial nature, or 2) in a manner that is clearly excessive and intended to annoy or harass. Subscribers that Hawaiian Telcom determines to be in violation of this policy shall be subject to immediate termination of service without prior notice, or immediate suspension of service without prior notice pending results of an investigation.

# APPENDIX H

## Website Use, Content & Digital MultiMedia Policy

Hawaiian Telcom Policy: HTP-590

PLEASE READ THE FOLLOWING AGREEMENT CAREFULLY

### HAWAIIAN TELCOM WEBSITE USE AGREEMENT

This Website Use Agreement ("Agreement") is entered into by you and Hawaiian Telcom. The Hawaiian Telcom Websites [www.hawaiiantel.net](http://www.hawaiiantel.net) is comprised of various web pages, tools, information, software, content, software, and features (collectively, "Hawaiian Telcom Website") operated by Hawaiian Telcom Services Company, Inc.

This Agreement sets forth the terms and conditions under which you use the Hawaiian Telcom Website and under which Hawaiian Telcom agrees to your use of the Hawaiian Telcom Website. By using the Hawaiian Telcom Website, you agree to be bound by the terms of this Agreement. This Agreement includes Hawaiian Telcom's Website Use Policy located at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/) and any notices regarding the Hawaiian Telcom Website (all of which are available for review at [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/), and are incorporated herein by reference). You may also receive a copy of this Agreement by writing us at:

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

If you do not agree to the terms of this Agreement, you must immediately stop your use of the Hawaiian Telcom Website, High Speed Internet Access and Dialup Service.

#### 1. SCOPE OF HAWAIIAN TELCOM WEBSITE

Hawaiian Telcom makes part of the [www.hawaiiantel.net](http://www.hawaiiantel.net) 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 Website is 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.

#### 2. REGISTERED USERS

You agree that the information you provide during the Hawaiian Telcom Website registration is accurate and that you are 18 years of age or older.

#### 3. NO WARRANTY

HAWAIIAN TELCOM (AND ITS THIRD PARTY SUPPLIERS AND LICENSORS) PROVIDE THE HAWAIIAN TELCOM WEBSITE ON AN "AS IS," AS AVAILABLE, BASIS, WITH ALL FAULTS, AND HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ACCURACY, NON-INFRINGEMENT, NON-INTERFERENCE, COMPATIBILITY OF SOFTWARE PROGRAMS, INTEGRATION, OR THOSE WARRANTIES WHICH MAY ARISE BY COURSE OF DEALING, OR COURSE OF TRADE. ALSO, THERE IS NO WARRANTY OF LACK OF VIRUSES OR OTHER DISABLING CODE OR CONDITION, LACK OF NEGLIGENCE OR LACK OF WORKMANLIKE EFFORT. THE ENTIRE RISK ARISING OUT OF THE USE, QUALITY, ACCURACY, EFFORT, OR PERFORMANCE OF THE HAWAIIAN TELCOM WEBSITE IS WITH YOU. IN ADDITION, HAWAIIAN TELCOM DOES NOT WARRANT THE SECURITY OF THE HAWAIIAN TELCOM WEBSITE OR, INFORMATION, SOFTWARE, CONTENT, AND FEATURES AVAILABLE THROUGH IT WILL BE UNINTERRUPTED, ERROR-FREE, PROVIDED PROPERLY OR COMPLETELY, OR BE AVAILABLE 24 HOURS PER DAY, 7 DAYS PER WEEK. HAWAIIAN TELCOM IN ITS DISCRETION MAY PROVIDE SUPPORT FOR THE HAWAIIAN TELCOM WEBSITE.

#### 4. LIMITATION OF LIABILITY

IN NO EVENT WILL HAWAIIAN TELCOM BE LIABLE TO ANY PARTY FOR (i) ANY SPECIAL, DIRECT, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE) OR ANY OTHER DAMAGES ARISING IN ANY WAY FROM OR IN CONNECTION WITH THE AVAILABILITY, USE, RELIANCE ON, PERFORMANCE OF THE HAWAIIAN TELCOM WEBSITE, PROVISION OF OR FAILURE TO PROVIDE THE HAWAIIAN TELCOM WEBSITE, LOSS OF DATA, YOUR ACCESS OR INABILITY TO ACCESS OR USE THE HAWAIIAN TELCOM WEBSITE OR YOUR USE AND RELIANCE ON INFORMATION OR CONTENT AVAILABLE ON OR THROUGH

THE HAWAIIAN TELCOM WEBSITE, INCLUDING VIRUSES ALLEGED TO HAVE BEEN OBTAINED, OR INVASION OF PRIVACY FROM OR THROUGH THE HAWAIIAN TELCOM WEBSITE, EVEN IF HAWAIIAN TELCOM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE; OR (ii) ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, OR OTHER DYSFUNCTION IN, OR DESTRUCTIVE PROPERTIES OF, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE HAWAIIAN TELCOM WEBSITE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. IN SUCH STATES OR JURISDICTIONS, HAWAIIAN TELCOM'S LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

#### **5. 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 Website 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 Website.

#### **6. INTELLECTUAL PROPERTY RIGHTS**

All title and intellectual property rights (including without limitation, copyrights, patents, trademarks and trade secrets) in and to the Hawaiian Telcom Website (including but not limited to, related software and including but not limited to any images, photographs, animations, video, audio, music, text and "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 Website 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 Website other than the right to use the Hawaiian Telcom Website according to the terms of the Agreement.

#### **7. MANAGEMENT OF YOUR DATA**

You are solely responsible for obtaining, installing, 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 Hawaiian Telcom Website. Minimum systems requirements apply to the use of the Hawaiian Telcom Website and it is your responsibility to ensure your computer system complies with these requirements. You are responsible for management of your information, including but not limited to back-up and restoration of data, erasing data from disk space you control and changing data on your router. You are also responsible for development and maintenance of any security procedures you deem appropriate, such as logon security and encryption of data, user ID and password on your router and firewalls, to protect your information. Hawaiian Telcom is not responsible for back-up and restoration of your information or for any loss of or disablement of access to your information, including without limitation, email and address book information. In addition, you agree that information required by the Website software (including any personalization information) and other identifying information requested by Hawaiian Telcom or its portal supplier may be placed in our user directory.

#### **8. MISCELLANEOUS PROVISIONS**

**a.** If any part of this document is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.

**b.** By transmitting, uploading, posting or submitting any information or material using the Website Tools, you (i) represent that such information is not confidential, secret or proprietary information belonging to someone else; and (ii) warrant that no other party has rights to the information and that your transmission, posting, uploading or submission of the information does not violate any copyright or other laws.

**c.** The Hawaiian Telcom Website contains third party links and it is provided by Hawaiian Telcom only as a convenience to its users. Any Websites linked to or from the Hawaiian Telcom Website are not reviewed, controlled, or examined by Hawaiian Telcom and Hawaiian Telcom is not responsible for the contents of any linked site or any link contained in a linked site. The inclusion of any linked sites or content from the Hawaiian Telcom Website does not imply endorsement of the linked site or content by Hawaiian Telcom. In no event shall Hawaiian Telcom be liable to anyone for any damage arising from or caused, directly or indirectly, by the creation or use of a third party's Website, or the information or material accessed through such Websites.

**d.** The terms of this Agreement apply only to your use of the Hawaiian Telcom Website and do not apply to your use of any other Hawaiian Telcom product or service. The terms and conditions applicable to such other Hawaiian Telcom products or services shall apply to and govern your rights and obligations (and ours) with respect to your use of such other products or services.

**e. You and Hawaiian Telcom agree that the substantive laws 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 HAWAIIAN TELCOM WEBSITE. Except as otherwise required by law, including Hawaii laws relating to consumer transactions, any cause of action or claim you may have with respect to the Hawaiian Telcom Website must be commenced within one (1) year after the claim or cause of action arises or such claim or cause of action is barred.**

f. For your reference, you may refer to the copy of this Agreement that can be found on [support.hawaiiantel.net/policies/](http://support.hawaiiantel.net/policies/) located on Hawaiian Telcom's home page.

g. 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 [WebSiteUse@hawaiiantel.net](mailto:WebSiteUse@hawaiiantel.net). You agree that your name, User ID, and other identifying information may be placed in our user directory.

9. 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.

10. 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.

# APPENDIX I

## Security Policy

### Hawaiian Telcom Policy: HTP-525

Hawaiian Telcom respects your right to security. We adhere to a set of security principles which form the basis of our security policy. If you have any questions or concerns about our Security policies, please send us an email at [security@hawaiiantel.net](mailto:security@hawaiiantel.net) or send a letter via US mail at the following address:

ATTN: Director of Security, 1<sup>st</sup> Floor  
Hawaiian Telcom Services Company, Inc.  
PO Box 2200  
Honolulu, HI 96841

### How do I know I am on a secured site?

Every secure page on our Websites has been secured with a digital certificate by Verisign. To view this certificate, click on image of the closed lock on the bottom bar of your browser window. This certificate will show that you are sending your personal information to Hawaiian Telcom.

### How does Hawaiian Telcom prevent unauthorized access to my information?

Your password is set at a minimum of six characters, which provides added protection for your personal information. On secured pages, this site uses SSL encryption up to 128-bits.

Information that you share about yourself in chat rooms, message boards, instant messaging communications and similar forums becomes immediately available to others who have access to those fora. These areas are considered public spaces and Hawaiian Telcom cannot protect the privacy of information disclosed therein. Please exercise caution when disclosing personal information in these areas.

### What information is stored by the site or in cookies?

Registration information, bill and online shopping, data and contact email addresses are not stored by the Hawaiian Telcom site. They are stored in the Hawaiian Telcom databases, physically secure environments that are not accessible via the Internet. This information is only available to you through the use of a secure ID and password, and the information is transferred from our databases for your viewing.

A cookie is a small, encrypted data string our server writes to your hard drive that contains your unique User ID for our Website. Cookies help us to identify returning visitors to our Websites, which allow us to give you a more personalized, useful experience on our Website. We use cookies to deliver web content specific to your interests, to keep track of your order as you order services, and to control access to our premium content. A cookie cannot be used to access or otherwise compromise the data on your hard drive. You can choose to change your browser settings to disable cookies if you do not want us to establish and maintain a unique Hawaiian Telcom User ID. Please be aware that cookies may be required to complete certain functions on this Website, such as ordering in our online store. To disable cookies, see next section.

### Here is How to Set Your Cookie Preferences:

- Netscape Navigator 3.x: In the Options menu, select Network Preferences. In Network Preferences, click on the Protocols tab and there you may choose to be warned before accepting cookies.
- Netscape Navigator 4.x: In the Edit menu, select Preferences. In the Preferences dialog box, in the left hand side menu, click on 'Advanced' and 4 options concerning cookies will appear on the lower right. Choose Help for further details. You can find more information about cookies and Netscape on the Netscape Website.
- Microsoft Internet Explorer 3.x: In the view menu, select Options. Click on the Advanced tab. You may choose to be warned before accepting cookies.
- Microsoft Internet Explorer 4.x: In the view menu, select Options. Click on the Advanced tab and scroll down to a yellow triangle icon with an exclamation point labeled 'Cookies' where you have 3 options.
- Microsoft Internet Explorer 6.x In the Tools Section Choose 'Internet Options' then choose 'Privacy' and scroll the bar from "Accept all Cookies" to "Block all Cookies".
- Other Browsers: Contact the manufacturer of the browser for information.

