

## **TAPACOM**

### **Master Agreement to Terms and Conditions**

This agreement (including sections A, B and C) represents the complete agreement and understanding between TAPA Communications (hereafter called TAPACOM) and below named Business or Organization (hereafter referred to as "Customer"). Upon notice published 30 days in advance, either online via TAPACOM's web site <<http://www.tapacom.net/>> and/or by email, TAPACOM may change these terms and conditions, and/or change the prices charged for these services, and/or discontinue or change the services offered. Customer's Internet services will only be activated after receipt of a signed copy of this form from Customer. After this form is completed, any new services requested by Customer will be governed by this document, which only needs to be filled out once. Requests for additional services will be phoned in or sent via fax to TAPACOM by one of the Business or Organization's authorized contacts placed on file with TAPACOM. Customer is responsible for maintaining a current and accurate list of authorized contacts with TAPACOM. TAPACOM assumes no responsibility for actions of unauthorized parties left on authorized list by Customer.

From time to time, a new signed version of this form may be required for signature. Certain services can be billed to a client without prepayment. Others cannot and do require prepayment via check, credit or debit card. TAPACOM will advise you the payment terms that apply. Accounts in arrears generally must bring accounts to zero balance status in order to add new services.

Parent or legal guardian co-signature is required if Customer is under 18 years of age or requires such co-signature.

**Authority to execute this Agreement**

The persons signing this Agreement represent that they:

(a) have signed voluntarily and with complete understanding of the meaning of this Agreement including sections A, B and C.

(b) have full and complete authority to execute this Agreement on behalf of the Customer:

Business Name (as registered at DCCA) \_\_\_\_\_  
or Organization Name

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Agreement \_\_\_\_\_

Terms accepted for Customer by (print):

Authorized Signature: \_\_\_\_\_

Terms accepted for Customer by (print): \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Received and authorized for TAPACOM by \_\_\_\_\_

Date of Receipt \_\_\_\_\_

## Billing Method, Authorized Contacts and Identity Verification

### Billing and inquiries should be directed to:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email address: \_\_\_\_\_

### Monthly Invoice Destination (via email only):

Company/Name: \_\_\_\_\_

Department: \_\_\_\_\_

Billing Email Address: \_\_\_\_\_

### Automatic Credit or Debit Card Payment Authorization:

**Put my signature on file for monthly credit card payment** of my TAPACOM account charges and all charges I have authorized TAPACOM to make on my behalf. I authorize TAPACOM to bill me on a monthly basis, at the current rate for the type of account and services chosen, until my account is terminated. When my card expires, I will provide TAPACOM with the new expiration date or a new card number. Changing the card number on file will require that another authorization form be filled submitted.

Name on card: \_\_\_\_\_

Card number \_\_\_\_\_ Exp Date: \_\_\_\_\_

Authorized signature: \_\_\_\_\_

TAPACOM takes Internet abuse seriously. Internet abuse originating from customer account (regardless of source) results in forfeiture of all setup and monthly fees plus applicable penalties. Customer agrees to abide by TAPACOM's definition of Internet Abuse. Among other types of abuse, spamming and UCE (or their relay) are specifically not tolerated. Please consult the User Agreement for full details and penalty descriptions. A signed copy of the User Agreement is required for service.

## Account Security Information

The people listed as contacts here have the ability to authorize charges to Customer's account, to add or delete services and to sensitive account information, including user account data (including email) and passwords. Customer's individual users will NOT be able to add or delete services, or to instruct TAPACOM to provide sensitive account information. In some technical support cases, this may mean that in order to help Customer's user, we need to contact the authorized party and verify the request prior to delivering assistance. It is important that we verify (with reasonable certainty) the identity of the authorized contacts before taking any requested actions or providing requested information.

Each authorized contact shall provide a unique secret question/ secret answer for verification purposes. Customer shall keep this information current and will notify TAPACOM promptly of any changes. Only supply information known ONLY to the respondent and not likely to be found in common databases, or from a stolen wallet.

Authorized Contact Name: \_\_\_\_\_

Contact Signature: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email address: \_\_\_\_\_

### **Default Secret Question:**

What was the name of your **first** pet or first "best friend?" \_\_\_\_\_

Is this a  pet or  best friend?

**Create a Secret Question of your own.** It MUST be information not known by anyone but you. For instance, Mother's Maiden Name is not a good question. Questions with yes or no answers cannot be accepted.

My own Secret Question:

\_\_\_\_\_

My own Secret Answer:

\_\_\_\_\_

## **A. TAPACOM TERMS OF SERVICE**

**A.1 Provision of services.** TAPACOM will provide services on its host computing systems to Customer in exchange for payment of fees and compliance with the terms and conditions of this document. TAPACOM services are defined as the use by Customer of computing, telecommunications, software, and information services provided by TAPACOM. These services may include the provision of access to computing, telecommunications, software, and data services provided via the worldwide computer network known as the Internet.

**A.2 Observation of Agreement by Customer and Any Parties to Whom it Supplies Internet Services.** Each person allowed by the Customer to access services covered by this agreement (hereafter referred to as “user”) must be informed of and abide by section B of this agreement. Customer assumes complete responsibility to ensure user(s) is aware of terms and agrees to enforce the Acceptable Use Policy. Customer assumes full responsibility for the actions of users to whom they supply services. If in TAPACOM’s judgment a user who is supplied services by the Customer violates this Agreement, TAPACOM may exercise the sanctions and remedies provided in the agreement against the Customer and/or responsible parties undersigned.

**A.3 Termination of Employment or Association.** If a user ceases to be Customer’s employee or associate, upon Customer’s written notification, TAPACOM will promptly terminate services and any prearranged account authorizations to user. Nothing in this paragraph shall preclude TAPACOM from enrolling a user separately from this Agreement. However, any username and contents of associated directories governed by this agreement will by default belong to the Customer, not the user. If the user is purchasing services from the Customer, the same limitations apply. It is the responsibility of the Customer to inform all its users of this agreement including the behavior expectations, the stipulation of service ownership by the Customer, not the user, and the ability of the Customer to at any time and without user consent to access user files and passwords (hence no expectation of privacy or ownership of files or access is offered nor should be implied to the individual user).

**A.4 Account and agreement term.** This agreement shall remain in effect until Customer terminates account or TAPACOM cancels Customer's account. TAPACOM may occasionally require new registration and account information by Customer to continue service. Customer’s authorized contact person(s) will notify TAPACOM in writing or by email of any changes in the account information, such as changes in personnel, address or phone number. TAPACOM reserves the right to change the terms and conditions by notifying Customer by email and/or posting on the TAPACOM web site at <<http://www.tapacom.net>> at least 30 days in advance of the effective date of the change.

Use by Customer after the effective date constitutes acceptance of the new terms and conditions. If customer does not agree to the new terms, Customer may cancel this agreement at any time in accordance with the terms and conditions stated herein.

**A.5 Metered services:** TAPACOM meters monthly bandwidth transfer (upload and download) amounts on the following services:

- Digital Subscriber Line (DSL)
- Frame Relay
- Colocated Servers
- Web Hosting
- Dedicated circuit point-to-point connections

Usage thresholds vary with the services selected, contract terms & special proposals which may be created for the client.

Consult the service application form and/or mutually agreed to TAPACOM proposal for details. Customer confirms that they have read, understand and agree to metering thresholds as described in the respective applications forms and/or mutually-signed proposal.

From time to time, cases arise where TAPACOM becomes aware of abusive bandwidth usage (for example: a customer machine infected by a virus, being used as a spam-relay or for port-scanning). In such cases, TAPACOM reserves the right to determine what constitutes abuse, even if monthly bandwidth allotment (as defined in A.5) is not exceeded, if the abuse is unintentional or if the abuse is unknown to the customer. TAPACOM will attempt to contact the holder of accounts demonstrating abusive usage of which we are aware. The account holder is generally given 24 hours to respond. Some situations are severe enough that immediate suspension is required, for instance to prevent the propagation of a rapidly spreading virulent computer virus or worm, in which case no advance notice of shut-off will be given (though we will attempt to contact the account owner).

Unless resolved within a 24 hour period, account holder may receive an email warning, have access to TAPACOM's servers blocked, or have account suspended without warning by TAPACOM, depending on the severity of the situation as assessed by the TAPACOM. Customer will continue to be charged during suspension and will also be assessed reactivation and abuse fees if applicable.

**A.6 Disclaimer and Limitation of Liability.** TAPACOM makes no warranties of any kind, whether expressed or implied, for its services. TAPACOM specifically disclaims any implied warranties of merchantability or fitness for any particular purpose. Due to the nature of Internet connections, no single provider can guarantee against outages, errors or unavailability. For services with "Committed Information Rate," these guarantee

performance between the customer site and the ISP only. Performance on the Internet itself depends on many factors and so cannot be guaranteed. TAPACOM strives to maintain uninterrupted service, but delays, crashes and outages (planned and unplanned) do occur. TAPACOM will not be responsible for any losses or damages resulting from delays, non-deliveries, miss-deliveries, service interruption, force majeure, or Customer's errors or omissions.

TAPACOM assumes no liability for customer equipment that may be damaged for any reason either at TAPACOM or in transit.

TAPACOM will not under any circumstances be responsible for consequential damages.

TAPACOM cannot guarantee the privacy or continued storage of customer files left on our servers or servers connected to our network.

The validity, construction and performance of this agreement shall be governed by the laws of the State of Hawai'i. If any provision of this agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this agreement will remain in full force and effect.

This agreement shall become effective when Customer's access is enabled. Customer may have different IT policies within their company or organization. Customer acknowledges that this Agreement will override in the case of a conflict, and will compare these for potential conflicts before signing.

**B. TAPACOM USER ACCEPTABLE USE POLICY: Customer is responsible to uphold these terms and to distribute this to any user to whom customer provides access. In the event a user should violate these terms, the Customer assumes full responsibility.**

**B.1 Abuse of Internet Services.** Customer and users agree to use the services provided by TAPACOM as permitted by applicable local, state, and federal laws. Customer and users agree not to use these services to conduct any business or activity or solicit the performance of any activity that is prohibited by law. TAPACOM reserves the right to define and correct abusive behaviors as they occur and will charge the account owner (Customer) penalty fees (see Section C) regardless of the source of the activity. Internet Abuse includes things like online chain letters, off-topic Usenet postings and unsolicited emailing (spam). The Customer is responsible for the action of its users and its network's protection from abusive behaviors, both from within the company and through any activity using TAPACOM service(s). Customer agrees to abide by TAPACOM's interpretation of what constitutes Internet abuse. For clarification, Customer can ask TAPACOM <abuse@tapacom.net> for assistance. When in doubt, users are expected to consult TAPACOM beforehand to avoid inadvertent abuse.

**B.2 Disk Space Guidelines.** TAPACOM email accounts include 100 megabytes (MB) of space on the server. This is used for storage of the customer's email. TAPACOM can at its discretion review the contents of the customer's space at TAPACOM and remove files and materials that are illegally obtained or are consuming more than the customer's share of resources, and assumes no responsibility for the preservation of this data.

**B.3 Abuse of TAPACOM Services.** Any use of TAPACOM system resources that disrupts the normal use of the system for other TAPACOM customers is considered to be abuse and is grounds for administrative intervention or termination. Some examples of system abuse include spawning an excessive number of processes, consuming excessive amounts of hard disk space, memory or CPU for long periods of time, and staying attached to modems while not really "active" on the line, or running server processes while not logged in, including but not limited to running IRC bots, and similar background processes. If the misuse is unintentional, the suspension may be rescinded following discussion with TAPACOM. If the misuse is intentional, the suspension may be rescinded at the discretion of the TAPACOM, and may require the payment of a service reconnection charge, plus any applicable penalties (see section C). Occasionally, unintentional misuse may be misclassified as intentional misuse. Customers who believe their activity has been misclassified may appeal to TAPACOM.

**B.4 Security of Accounts and Other Networks.** Customer (and all its users) agree not to use TAPACOM services to obtain the passwords or other confidential information of customers on TAPACOM or other systems. Customer agrees not to use TAPACOM services to make unauthorized attempts to access the systems and networks of others, nor to attempt to disable or interfere with the use or operation of any systems or network. Customer acknowledges that any such attempts may violate applicable Federal, State or



local laws and may be cause for criminal prosecution. Generally, no information an organization or individual considers confidential or irreplaceable should be stored on any ISP's servers. While TAPACOM takes reasonable precautions to protect user data privacy, this cannot be guaranteed and Customers should consult a qualified network security engineer if it plans to store private documents on an Internet-connected machine of any kind. Additionally, one of the following restrictions applies with regard to account sharing (depending on the type of service):

**B.4.a TAPACOM Dial-up Direct, email-only and Unix accounts.**

These are for individual users. Customer agrees not to share the password of account(s) with others, including but not limited to other family members or business associates. Customer acknowledges that TAPACOM may terminate the account without notice if the customer does not comply. There is an online session limit of 10 continuous hours (for dialup services only). A dialup Customer may log in as many times a day and as many hours a day as desired as long as the 10-hour session limit and 15-minute idle timeout are honored. Depending on the nature and the severity of the abuse, the user may receive an email warning, have their processes halted, or have their account suspended by TAPACOM. Multiple simultaneous logins from a single dialup account may be taken as evidence of sharing an account.

**B.4.b TAPACOM Dedicated Services (DSL, Frame, Colocation, Direct Feed.** These are for LAN, WAN or hosting use.

Customer may allow user(s) to access their connection. Users must be made aware by Customer that Customer has the authority to get their passwords and files from individual POP accounts hosted thru this agreement, and can create or cancel services without user's knowledge or permission. All POP accounts and their contents are the property of the customer, not the user. No expectation of privacy or ownership should be offered or expected in this regard.

**B.4.c TAPACOM Domain and/or Web Hosting.**

**Provision of services.** TAPACOM or its designated partner(s) will provide services on its host computing systems to allow customer "write access" to their directories and to allow the Internet community to access web pages belonging to the customer in exchange for payment of fees and compliance with the terms and conditions of this document.

Customer uses all features at their own risk. This agreement does not provide for web page design or troubleshooting. HTML and other consulting services are available for additional fees and by separate agreement. Data sent or received through the Internet or TAPACOM's system should not be considered inherently private or secure.

**Use of Material.** Customer agrees not to use TAPACOM services to violate copyright or other intellectual property rights of any author or publisher. For example, Customer may not make available by his/her Web page commercial software in violation of software license agreements.

**Domain Registration Policies.** For domains registered through TAPACOM's registrar service, both Customer and TAPACOM agree to abide by the ICANN Universal Dispute Resolution Policy found at <<http://www.opensrs.com/legal/udrp.shtml>>.

TAPACOM reserves the right to modify domain information at any time in order to protect the functionality of the domain name system and TAPACOM's system. Security of the registrar password is a shared responsibility. Customer agrees that they are responsible for password security.

For TAPACOM web hosting services: prohibited content includes, but is not limited to: some sexually oriented products and services, scams, spams, infringements, offensive, bigoted, dangerous, or illegal activities. this includes using webhosting services to directly or indirectly offer, sell, lease, license, display, deliver, advertise, recommend, or promote any content which (i) are unlawful or violates any applicable state, national, or international law, ordinance or regulation having the force of law, (ii) are pornographically or sexually oriented, profane, obscene, vulgar, offensive, lewd; (iii) are defamatory, libelous, slanderous, abusive, threatening or harassing toward others; (iv) are a sweepstakes, lottery, multi-level marketing program, chain letter or pyramid scheme; (v) are unfair, unlawful or deceptive business practice; (vi) are racially or otherwise offensive, hateful, bigoted or intolerant; (vii) are in violation of any privacy or data protection right or law or discloses any personal information or exploits in any manner children under the age of 18 years or third parties without their, or in the case of children, their parents', prior written consent; (viii) infringe or violate any patent, copyright, trademark, trade secret, right of publicity or privacy or other proprietary right under the laws of any jurisdiction; (ix) are the basis for any allegation, claim or suit against customer or any other party alleging product liability, breach of warranty, negligence, fraud, unlawful conduct, and/or any claims of causes of action whatsoever; (x) transmit or deliver in any manner material that contains viruses, worms, trojan horses, time bombs, cancelbots, and/or any other harmful or damaging software or other technology or the means of developing any of the above; (xi) advocate, promote or provide assistance in carrying out violence or any other unlawful activity against any persons or any governments, businesses or other entities; (xii) involve a significant risk of death or injury to any persons, or of damage to business or other entities or property in the event of an error or defect; (xiii) involve cruelty to animals; (xiv) are the subject of any government investigation or proceeding; (xv) are a weapon, or parts of or manuals for assembling any weapon, including but not limited to firearms, ammunition, explosives, grenades, bombs, and caustic or other dangerous substances; (xvi) are any form(s) of gambling; (xvii) are any type(s) of intoxicant, alcoholic beverage or illegal substance; (xviii) are not consistent with prevailing "Netiquette" standards as determined by TAPACOM at its sole discretion; or (xix) provide instruction in an activities listed in section (i) thru (xviii) above.

TAPACOM reserves the right to monitor and store content from Customer's web pages and associated log files to bill the customer, improve service and to determine if Customer is

violating the conditions of use as necessary. Domain Name Records are part of a public database, and are not considered private information. TAPACOM does not sell or share user information with any third parties except in the case of services provided by partners, wherein basic customer information as required for the delivery of service ONLY (not payment information) will be disclosed to a third party on a limited basis. This third party agrees not to release this information in any way or form. TAPACOM agrees to respect the privacy of Customer's Dial-up or Unix account, including personal files and email. However, TAPACOM reserves the right to monitor Customer's actions when necessary to help Customer or to protect TAPACOM's users and system.

**Illegal, Offensive or Adult Materials.** Customer assumes sole responsibility for all content made available from their Web space. In the case of a dispute over the legality of Customer's content, TAPACOM reserves the right to disable Customer's web space until the dispute is resolved.

**Reselling Web Space.** Reselling is defined as providing web space to, or making hyperlinks to other organizations in exchange for money or services. Customers may resell web space. TAPACOM web space customers assume personal responsibility for the content of any resold space according to the terms of this agreement, and any TAPACOM fees or penalties incurred in this reselling activity.

Customer is solely responsible for payment of and maintenance of DNS record with registrar. Customer is solely responsible for content (including copyright and permissions to use and distribute), keeping backup copies of web content (TAPACOM does **not** act as an archive), and ensuring accuracy and ownership of their DNS.

**B.5 Customer Privacy.** TAPACOM agrees to respect and protect the privacy of Customer's personal files and email but due to the nature of Internet services cannot guarantee that breaches in security will never occur. Customers are urged not to consider email and stored files as secure and should generally not use any Internet system to store sensitive data. All users of accounts governed by this agreement should be aware that the customer has the right to access all associated accounts and directories. TAPACOM does not sell any Customer information and will not generally confirm or deny to third parties if a user is a TAPACOM subscriber. TAPACOM reserves the right to monitor Customer's actions when necessary to help Customer or to protect other users and system. In the event that TAPACOM is presented with a request from the Customer, a subpoena by legal authorities, or where personal/public safety is threatened, TAPACOM reserves the right to provide any and all Customer information required.

## **B.6 Forgery or Impersonation**

### **Customer and its users agree:**

(a) not to use any TAPACOM service to impersonate any person, whether on TAPACOM or other systems.

(b) not to send email or post Usenet messages under the username or real name of any other person, or impersonate another Internet user, whether for malicious purposes or otherwise.

(c) not to attempt to intercept or cancel other users' messages.

If Customer does so, TAPACOM can suspend or terminate Customer's service.

**B.7 Use of Copyrighted Material.** Customer and its users agree not to use any TAPACOM services to violate copyright or other intellectual property rights of any author, publisher or other entity. For example, Customer may not upload or download commercial software in violation of software license agreements.

**B.8 Discovering & Reporting Abuse.** Violations of the TAPACOM conditions of use may in some cases be criminal offenses.

Customer will report to TAPACOM any information it may have in which the conditions of use may have been or are being violated. When TAPACOM becomes aware of possible violations, TAPACOM will initiate an investigation. To prevent further possible unauthorized activity, TAPACOM may suspend access to services during the investigation. Confirmed violations may result in cancellation of account(s) and/or criminal prosecution. Account suspension may be rescinded at the discretion of TAPACOM, following payment of a reconnection charge and any clean up fees incurred (see "Abuse of Internet Services"). TAPACOM reserves the right to monitor Customer's actions to determine whether Customer is in violation of this agreement.

**B.9 Offensive or Adult Materials.** TAPACOM does not monitor the content of materials accessed through TAPACOM. Some materials may be illegal, offensive or adult in nature. Customers less than 18 years of age must have a parent or legal guardian co-sign this agreement, verifying that the parent or legal guardian understands that Customer and any users to whom customer provides a connection will have access to such materials and accepts any responsibility for monitoring and/or controlling such access.

## C. TAPACOM BILLING POLICIES

**C.1 Billing/Terms/Termination.** TAPACOM will bill via email invoices or process direct payments through credit or debit card.

If invoicing is requested, invoices are sent via **email only** to the account specified by the account holder. It is the responsibility of the account holder to provide a current email address and to check this email account for bills. Failure to pay bills on time will result in loss of connectivity, service reinstatement fees and other penalties. In some cases, loss of domain ownership, email address availability or other losses could result.

Regardless of billing type selected, Customer agrees to pay bills on or before due date, and assumes full responsibility for any consequences of unpaid or late-paid balances.

The TAPACOM accounting cycle starts on the first day of each month. Services added thereafter will be prorated to harmonize with the existing billing cycle. All services are prorated and billed on the first of each month. The TAPACOM accounting period is one month. Customer must notify TAPACOM at least 15 working days before the next payment is due if Customer wishes to change the method of payment. Customer must notify TAPACOM at least 15 working days before the next payment is due if Customer wishes to change type of account with the next accounting period. Service payments must be submitted in advance of receiving services. TAPACOM does not accept postdated or un-imprinted checks. See schedule at <http://www.tapacom.net/> for special billing fees and refund policies associated with different services on TAPACOM.

**C.2 Delinquent payments.** Accounts that are delinquent by two weeks or more may be suspended, after which they cannot be used. During suspension, no email will be routed or forwarded, and may or may not be stored. Accounts that are delinquent may have their files archived or purged. TAPACOM reserves the right not to retain files (email, ftp, web etc.) for all accounts. TAPACOM accounts accrue further charges while suspended. Should TAPACOM agree to reactivate the account, the past-due balance, late fee per service reactivated and the next month's service fee must be paid in full prior to reactivation.

Other penalties may apply. Overdue account balances may be turned over to a collections agency after suspension or cancellation of the account and will result in banishment from the purchase of future services.

**C.3 TAPACOM reserves the right to hold or terminate an account at any time for any reason.** In the case of violation or suspected violation of this user agreement, TAPACOM reserves the right to hold or cancel account without warning and to charge customer for administrative fees. **In the event of abuse, the setup fee and prepaid service fees are forfeit, and additional penalty fees apply. See <http://www.tapacom.net/> for details.**

**C.4 Customer requested holds.** The customer can put certain services on hold. Other services cannot be put on hold. Accounts on hold (and in good standing) incur a hold fee,

but do not incur additional charges. TAPACOM cannot guarantee the storage of email or other files for accounts on hold. "Hold fees" are due at the time hold is requested.

**C.5 Termination of Services.** Termination requests must be signed by the authorized account holder and received in writing via fax or postal service at TAPACOM's main office. They must originate from the account owner or an authorized contact as specified by customer. Identity verification will be required. The ownership of the account will reside with the specified Customer, not the individual user. Accounts will be terminated within 15 working days after the receipt of such requests. No refunds will be provided for unused service time. Cancellation of requests will be processed at end of current billing cycle. If Customer so requests at the time of cancellation, TAPACOM will forward email from a cancelled TAPACOM account to Customer's new email address, for two months after termination for accounts in good standing. There will be a fee for this service and due at the time of the cancellation request. Requests for forwarding after the date of cancellation may or may not be honored, as closed accounts are normally de-created and the files purged. Customer is responsible for all fees up to the date of termination of the service.